

## SECTION A – MATTERS FOR DECISION

### Planning Applications Recommended For Approval

<b><u>APPLICATION NO:</u> P2020/0362</b>	<b><u>DATE:</u> 22/05/2020</b>
<b>PROPOSAL:</b>	Construction of complementary restoration earthworks to create 2 looped landform platforms (part in cutting and part on embankment) with associated drainage infrastructure and areas of landscaping and habitat creation to create a flexible and adaptable area of land that could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a proposed rail testing, research and development and storage facility). (Cross-boundary application - see Powys CC Application ref. 20/0738/FUL)
<b>LOCATION:</b>	Land at and surrounding the Nant Helen Open Cast Coal Site, Powys, and Onllwyn Distribution Centre, Neath Port Talbot
<b>APPLICANT:</b>	Mr Rob Thompson, Celtic Energy Ltd,
<b>TYPE:</b>	Full Plans
<b>WARD:</b>	Onllwyn (also affecting Seven Sisters)

### BACKGROUND INFORMATION

This proposal relates to a significant development site within the Dulais Valley which straddles the Neath Port Talbot and Powys administrative border. The site is largely within Powys but sections along the southern boundary are within Neath Port Talbot. Therefore, an identical application has been made to Powys CC, which is to be reported to PCC's Planning, Taxi Licensing and Rights of Way Committee on 27<sup>th</sup> July 2020 (the outcome of which will be verbally reported to Members at Committee).

While this report largely seeks to address only those matters which affect the land within the administrative boundary of Neath Port Talbot, due to the size of the development and the complexities associated with such a cross-boundary application, notably the assessment of the 'planning balance', the report also inevitably incorporates overarching assessments of impact which relate to the whole development and thus to both NPT and Powys (and the Brecon Beacons National Park beyond).

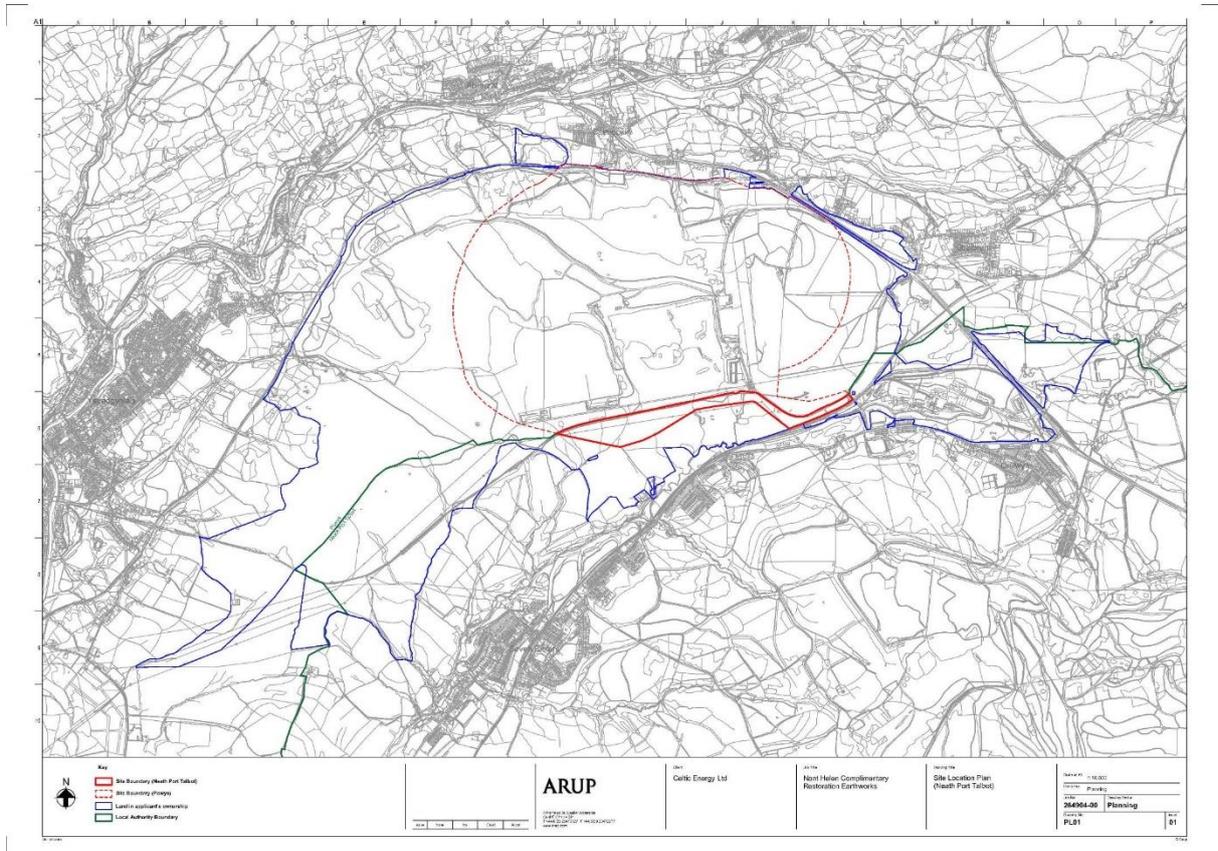
### SITE AND CONTEXT

The application site comprises land at and surrounding the existing Nant Helen Open Cast Coal Site (OCCS), Powys, and Onllwyn Washery Distribution Centre, Neath Port Talbot. The plan at Figure 1 below identifies the extent of the overall site and that area of land lying within NPT (to which this application relates).

The application site is located approximately 1.1km east of Penrhos; 1km east of Cae'r-bont; 100m south of Caehopkin; 750m south of Abercrave; 150m south-west of Coelbren; 350m north-west of Onllwyn and 450m north of Seven Sisters. The Brecon Beacons National Park lies to the north, the closest point being some 90m from the

application site. The Nant Llech SSSI lies within the National Park at approximately 115m to the north of the application site (Powys) boundary.

Figure 1: Site Location Plan (NPT boundary in red, Powys boundary in dotted red line)



The application site as a whole (i.e. PCC and NPT) covers an area of some 416 hectares and forms part of the Celtic Energy Ltd landholding at the Nant Helen Opencast Coal Mine. A substantial area covering the western half of the application site has been subject to opencast coal working of the Middle Coal Measures west of the Pwllau Bach Fault, starting with the Abercrave/ Gwaunton site between 1963 and 1973. Opencast mining at the Nant Helen series of sites (south of Abercrave/Gwaunton), began in 1986 and has moved in a westerly direction up until the present day. In the period between 1972 and 1982 opencast mining was undertaken in the Lower Coal Measures (east of the Pwllau Bach Fault) at the Onllwyn site which is in the eastern half of the application site.

Celtic Energy Ltd currently operate the Nant Helen Remainder Opencast Coal mine which covers the western end of the application site and further land to the west. The current opencast excavation void is located outside the application site, but the overburden storage mounds, the coal preparation plant, stocking area, offices and workshops are located within the application site (in Powys's administrative area).

Coal extraction operations will cease in 2021 at which point Celtic Energy Ltd will be required to restore the land in accordance with the approved restoration scheme.

The area of NPT land covered by this application does not lie within the Nant Helen OCCS site.

The site has a number of designated and non-designated historic assets within or nearby, of which the asset of most significance in itself and due to the potential impacts, is 'The Tramroad at Ystradgynlais (Claypon's Extension) (CH001)' which is a nationally important earthwork dating to the 1830s designated as a Scheduled Ancient Monument (SM), and located on the boundary between Powys and NPT.

The southern area of the site is crossed by high voltage overhead lines with associated towers running roughly parallel to each other, the northern line carries Western Power Distribution's (WPD) 132kV cables, the southern line carries National Grid's (NG) 400kV cables.

A part of the site (in Powys) also falls within the Mynydd-y-Drum Common over which Commoners rights are currently suspended. In addition, a number of Public Rights of Way cross the site but these are currently suspended due to the ongoing opencast coaling operation.

The SUSTRANS National Cycle Route 43 Celtic Trail East follows the northern and western boundary of the site. Access to the site is gained from the A4221 at Coelbren, along a 1.2km access road which heads west before turning south towards the office/workshop area. There is also an internal haul road link which runs south from the office/workshop area before turning east towards Onllwyn Washery.

## DESCRIPTION OF DEVELOPMENT

Although outside of the NPT administrative area, it is of note that the Nant Helen OCCS amended restoration scheme was approved by Powys CC on 8<sup>th</sup> June 2020 (subject to a Section 106 Agreement) and the purpose of this application at this time is that in combination they will create a flexible and adaptable landform that would be suitable for a variety of end uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a proposed rail testing, research and development and storage facility). It should be noted that the timing of this application seeks to ensure that the construction of the landform and the restoration of the surface mine can be undertaken in tandem as there are significant cost benefits to undertaking the work at the same time.

### *Engineering Operations*

The proposed development (taken as a whole) includes a combination of cuttings and embankments, with associated drainage works, creating a loop form (inner and outer loop) that integrates with the restored land created following the completion of existing coal mining operations. The materials for the earthworks would all originate on site and represent a cut volume of approximately 3,255,000m<sup>3</sup>, of which 1,765,000m<sup>3</sup> will be used for the construction of the embankments and the remainder will form part of the restoration of the Opencast Coal site. As these numbers would suggest, the majority of the proposed loops are in cutting but there is a significant section of embankment proposed along the northern section of the outer loop. Small sections of embankment are required in the south, east and west but their height is relatively limited (9m, 10m and 3m respectively).

The finished levels can be found on the following links :-

- [Finished Levels 1](#)
- [Finished Levels 2](#)
- [Finished levels 3](#)
- [Finished Levels 4](#)

The extent of 'cuttings' and 'embankments' (fill) are shown on Figure 2 below, with typical sections shown at the following link: -

- [Track embankment and cutting typical sections](#)

Figure 2: Cuttings and Embankments Aerial (NOTE: The 'red line' shown is NOT the application site boundary for the current application which is correctly identified on Figure 1 above)



The earthworks include embankment gradients of typically 1:3 and cuttings typically 1:2.5, with some 1:1 gradient cutting in rock. The northern embankment (in Powys) extends to over 40m in height and the deepest cutting is 15-20m deep.

It should be stressed that although the application site overlaps with the latest coal mine boundary, the restoration scheme still proposes restoration to a mix of agriculture (upland common and enclosed pasture), woodland/hedgerows and nature conservation habitats.

## *Proposed After Uses*

As referred to above, the engineering works would provide a flexible and adaptable landform which has the potential to facilitate the land as a whole being used for a variety of end uses including agriculture, nature conservation, leisure and tourism.

It would also *potentially* facilitate industrial, research and development/business uses including a proposed rail testing, research and development and storage facility being promoted by Welsh Government. In this respect it is notable that the proposal seeks to enable and de-risk that potential development whilst at the same time provide opportunities for recreation, leisure, agriculture and nature conservation should such a proposal not come forward.

Key components of such a rail facility could include an external loop for high speed performance endurance testing, together with a lower speed internal loop for testing rail equipment, and to facilitate the potential use as rail test tracks, track gradients need to be no steeper than 1:100 gradient, whilst the connection from the main railway line is to be no steeper than 1:50 and the earthworks have thus been designed with that in mind.

To enable the potential for test tracks to be established on the site to the speed and length required, a number of options have been considered in terms of horizontal and vertical alignment, considering topographical variation and to avoid diverting both NR and WPD overhead cables. Alignments have been identified which keep away from the NG overheads, traverses under the WPD overheads but avoids the towers and follow existing topographical features to reduce the scale of the earthworks as much as possible. Due to the speeds to be tested and therefore the horizontal alignment of the track, together with the position of the scheduled ancient monument in the south, avoiding this feature is not feasible.

Whilst the landform created would allow for future leisure, tourism and industrial opportunities, which could include industrial uses such as a proposed rail testing, research and development and storage facility, these are not proposed in this application and would be subject to separate planning applications in the future. In this respect, the creation of the proposed landform while facilitating the necessary landform for such a proposal, in no way prejudices planning applications which may be submitted for future uses which would have to be considered on their merits. The proposed landform has to be considered on its merits.

Notwithstanding the potential rail use, the proposed earthworks would thus provide a comprehensive, flexible and adaptable landform across the entire site that could support a wide range of future uses including agriculture, woodland and nature conservation and/or amenity, leisure, tourism and employment. The proposed earthworks would also provide a landform that is compatible with various leisure opportunities, such as mountain biking, walking and other outdoor pursuits complementing the site's location close to 'waterfall country' and the wider Brecon Beacons National Park.

Ultimately, Celtic Energy's intention is for the proposed earthworks to provide a flexible landform that maximises options for the beneficial reuse of land associated with Nant Helen Surface Mine, whilst ensuring not to preclude appropriate future uses that are yet to fully emerge with any degree of certainty. In this respect it is important to note that

the restoration of the surface mine is time-bound and the applicant wishes to carry out the earthworks at the same time as restoration in order to minimise cost and disturbance. The intention is also to enable and de-risk the rail proposal but in the knowledge that if that proposal does not materialise the landform will facilitate other forms of development. However, at this juncture the Authority is specifically being asked to consider only the acceptability of a flexible and adaptable landform which integrates with the approved surface mine restoration scheme.

### *Timescales*

With the exception of the Northern Embankment (located in Powys), works are proposed to be carried out between 0600 and 2200 hours Monday to Friday, and 0700 to 1300 on Saturday with no working on Sundays (which is the existing site operation times for the opencast mine). Due to the closer proximity of the northern embankment to residential receptors (in PCC), works on this area would be restricted to between the hours of 07:00 and 18:00 (weekdays) and between 08:00 and 13:00 hours on Saturday.

On the assumption that the Complementary Restoration Earthworks would take place at the same time as the works needed to return some of the overburden back into the void on the site (part of the restoration requirements includes the reduction in height of the overburden mound that currently exists to the east of the existing void), together with the required site preparation works (ecological, archaeological and drainage works), this would result in a combined works programme of 73 weeks (approx. 18 Months) with approximately 300-600 on-site vehicle movements a day (internal movements).

### *Common Land / Rights of Way*

A part of the site also falls within the Mynydd-y-Drum Common over which Commoners' rights are currently suspended. In addition, a number of Public Rights of Way cross the site but these are currently suspended due to the ongoing opencast coaling operation. It is intended to restore the common land (a separate legal process will need to be undertaken to seek common land consent for these works) and to reinstate the Public Rights of Way (with possible diversions where appropriate).

## SUPPORTING INFORMATION

The application has been identified as an EIA application as defined by the [Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) Regulations 2017](#), ('the EIA Regulations') and an Environmental Statement (ES) has been provided. The EIA process aims to ensure that any significant effects arising from a development are systematically identified, assessed and presented to help local planning authorities in determining planning applications. If measures are required to minimise or reduce effects then these are clearly identified.

The submitted Environmental Statement (comprising non-technical summary, main text and technical appendices) has identified 'the baseline conditions', and assessed the potential effects of the development, in relation to:

- Socio-Economic
- Water Environment

- Ground Conditions
- Biodiversity
- Cultural Heritage
- Landscape and Visual Impact
- Noise and Vibration
- Cumulative effects

The ES and all other supporting information is available to view on the [Council's Online register](#). The assessment below has had regard to all environmental information submitted within the ES along with the comments of statutory consultees on the information supplied, and the comments, observations and representations provided by members of the public have been taken into consideration in the recommendation.

### NEGOTIATIONS

Discussions in respect of the site in connection with this earthworks application and potential subsequent application for a rail testing facility have been ongoing for some time with Celtic as landowner, and as part of a Joint venture between NPT, Powys CC and Welsh Government.

As part of these discussions, a decision was made by the landowner to submit this planning application in advance to create the necessary platform which, subject to planning permission, would undoubtedly add significantly to the 'business case' for bringing forward the rail testing facility at the site.

### PLANNING HISTORY

The Nant Helen OCCS has a detailed planning history, primarily (but not wholly) relating to land in the Powys administrative boundary, dating back to 1996, including (but not limited to) the following: -

- N1996/0112 (NPT)                      Extract coal by open cast methods incl. Washing of coal bearing material (access only in Neath b.cl. Area). Approved 01.01.1997
- P2001/0405 (NPT)                      Vary condition 1 of previous planning application P96/0112 - to extend the period in which the development is begun until 31st July 2003
- P/2011/0217 (PCC)                      Western extension to Nant Helen surface mine for the purposes of coal extraction along with completion of coaling at existing site and associated ancillary development including restoration and subsequent aftercare of the full development site - Planning Permission Granted subject to S106 Agreement – 9<sup>th</sup> March 2012
- PP 106-98-005/PP 106-12-001 (PCC)                      Nant Helen Extension – Planning permission Granted at Appeal – 21<sup>st</sup> July 1998

- 18/1070/REM (PCC) Section 73 application to vary condition 2 of P/2011/0217 to allow an extension to time to allow extraction of all the coal and completion of restoration.  
  
PCC resolved to grant subject to section 106 agreement (outstanding)
- 19/1899/REM (PCC) Variation of condition 45 of planning approval 18/1070/REM to allow for a revised restoration scheme.  
Planning Permission Granted subject to a Section 106 Agreement – 8<sup>th</sup> June 2020

In addition, a Scoping Opinion for the proposed Global Centre of Rail Excellence (GCRE) was issued in November 2019 (NPT ref. [P2019/5455](#) ; Powys CC App. No:[19/1619/SC](#)).

## CONSULTATIONS

### Neath Port Talbot Internal Consultees

**Environmental Health (Air Quality)** - Notes that the EIA has scoped out air quality for the following reasons:

The nearest sensitive receptors are located approximately 500m away from proposed dust generating activities. In human health terms, background annual PM10 concentrations are low (9-10ug/m<sup>3</sup>). There is a very low risk that air quality objectives will be exceeded by the proposed activities provided that good practice measures are followed. An assessment of mineral dust impacts on human health receptors is screened out.

The mineral type at the proposed site is soft rock according to the British Geological Survey. Due to the nearest sensitive receptors being more than 500m away from the proposed dust generating activities and the low background annual PM10 concentration it is considered that, in accordance to the IAQM mineral dust guidance (IAQM 2016, Guidance on the Assessment of Mineral Dust Impacts for Planning), a detailed dis-amenity dust impact assessment is not required.”

Based on previous knowledge of receiving complaints from Heol y Felin when the Nant Helen mounds were being formed (shifting of overburden) raises no objection but recommends that opencast style bowsers be used to minimise dust emissions in the same manner has been the case at Celtic Energy’s opencast sites (such matters to be addressed through the CEMP)

**Environmental Health (Land Contamination)** - After reviewing the Environmental Statement and in particular Chapter 6 Ground Conditions and its associated appendix (Land at Nant Helen and Onllwyn Coal Washery Geotechnical and Geoenvironmental Desk Study). Noting that the proposal may relate to a proposed Global Rail Centre of Excellence, nevertheless emphasis that the site could be used as public amenity land which from a land contamination point of view would be considered much more

sensitive. This would then need a desk study with a conceptual site model based on the most sensitive potential end use. Accordingly raises no objections subject to imposition of contaminated land conditions due to the need for contaminated land reports based on the specific end use.

In addition, while the application indicates that all backfilling will take place with site won material, recommends a condition preventing the importation of material unless it is approved in writing first so that we could ensure that it is chemically suitable for whatever the end use would be.

**Environmental Health (Noise)** - raises no objections subject to a robust Construction Environmental Management Plan (CEMP).

**Countryside & Wildlife (Ecology)** - A combined response has been issued on behalf of the NPT and Powys Ecologists, which is summarised as follows: -

The ES identifies that a full suite of ecology surveys have been undertaken for the site and surrounding vicinity over the 2018 and 2019 survey seasons and the assessment of the findings and impacts has been undertaken following current recognised guidelines with surveys being undertaken at the optimal time of the year with the effort employed appropriate for the nature and scale of the site affected by the proposed development.

In addition to the surveys identified above consideration was given to the potential for the proposed development to result in negative impacts – directly or indirectly – to statutory designated sites in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) including European Sites: - Coedydd Nedd a Mellte SAC – with two compartments approximately 4.2km and 6.7km east of the proposed development site; Cwm Cadlan SAC – 9.5km east of the proposed development site; and Blaen Cynon SAC – 6 compartments, with the closest being approximately 10.4km east of the proposed development site.

Having reviewed the report and associated information they are satisfied with the approach and scope of the HRA Screening Assessment and agree with the conclusion that there would be no likely significant effect to the SACs and their associated features either alone or in combination with other plans or projects and that no further assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) would be required.

It is noted that NRW have identified in their response dated 18<sup>th</sup> June 2020 that subject to the outlined pollution prevention measures being implemented the proposed development would not be likely to damage the features for which the Nant Llech SSSI is designated and have recommended that a pre-commencement condition requiring the submission of a detailed Construction Environmental Management Plan is included. We agree with this recommendation and consider that this requirement is necessary in order to ensure the development complies with the requirements of PCC LDP Policy DM2 and NPTC LDP Policies EN6 and EN7.

The conclusions regarding the lack of potential for impacts to the other SSSIs identified within 15km of the proposal is considered to be acceptable. They are also content that the conclusion of no negative impacts to locally designated SINCs is appropriate.

Having reviewed the evidence and assessment provided with regards to the area identified as PAWS Ancient Woodland habitat on the Ancient Woodland Inventory we are satisfied that the habitat present does not actually meet the requirements which would qualify it as ancient woodland habitat and therefore would not require the level of protection afforded to habitats of this type under National and Local Planning Policies and is instead dealt with in terms of general woodland habitat loss. It is also recommended that the Applicant approaches NRW with the supporting evidence submitted with this application to request that the area identified as PAWS is removed from the Ancient Woodland Inventory to avoid future confusion.

The ES identifies that the construction and associated site clearance with regards to the proposed development will result in the loss of existing habitat within the site boundary including habitats of conservation significance. Table 7.13 of the ES identifies the extent of habitat loss as a result of baseline and restored site which totals 87.6 Ha as well as extent of habitats to be created (of greater value) and habitats to be enhanced which totals 226.12 Ha. With the exception of semi-improved acid grassland the extent of habitats of note present on the site which will be lost as a result of the proposed development have been identified as being re-created/enhanced over an area which exceeds the area that would be lost.

The ES identifies that the long term maintenance and monitoring of newly established habitat and other habitats which will be retained and protected will be detailed within an Ecological Management and Monitoring Plan (EMMP), and it is therefore recommended that a condition to secure the submission of a detailed EMMP building on the principles outlined in Section 7.20 of the ES for approval by the LPA is included to ensure compliance with Powys LDP Policy DM2 and NPTC LDP Policies EN6 and EN7– it is recommended that the condition states that the EMMP covers a period of 25 years.

The assessment and identified mitigation for target species are considered to be appropriate, and it is noted that there is a need for an Invasive Non-Native Species Management Plan to ensure control and prevention of spreading of INNS during and post construction. No objections subject to submission of detailed versions of the EMMP, CEMP, INNSMP and EPP through pre-commencement planning conditions – it is recommended that the EMMP covers a period of 25 years.

Given the proposed development description identifies that the resulting development could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a proposed rail testing, research and development and storage facility) the EMMP should pay particular attention to the risk of 'double handling' in relation to any future development proposed.

In conclusion, having reviewed the information and associated assessments submitted to support the application it is considered that the proposed development would not result in the loss of biodiversity in the long term subject to implementation of the proposed mitigation and enhancement measures through detailed pre-commencement conditions.

**Head of Engineering & Transport (Highways)** advises as follows: -

This application is supported by an Environmental Statement (ES). Table 2.2 of the E.S. makes clear that the transport considerations in relation to the project have been “scoped out” as the proposals will not require materials to be either imported in or exported from the site and as such, the vehicular impacts on the surrounding highway network are considered to be minimal. The ES does not however, consider or quantify the level of plant and operatives that will be required to undertake the works and it does not clarify where such movements will occur. Further detail/clarification on this matter is requested.

Have subsequently confirmed that if all traffic is to remain within the site and there is no increase in traffic to and from the publically maintained highway then they have no objection and do not need a condition.

**Head of Engineering & Transport (Drainage)** advises that SuDs Approval Body (SAB) approval will be required prior to any work commencing.

**Public Rights of Way** - Note that NPT has a bridleway (BR26 Dulais Higher) that travels along the old tramway that’s also a listed structure. This bridleway is also registered on the Powys Definitive Map so it’s on 2 Definitive maps which is very unusual. We also have 1 footpath that is within the site boundary (FP15 Dulais Higher) although this can be accommodated quite easily if its affected at all.

Powys will need to divert their path network and should Bridleway 26 also require diverting they can also deal with this as it’s theirs as well as ours, which could also include our footpath 15 should that need realigning. The diversion order should be confirmed before works affecting footpaths.

Given the cross-boundary issues, the following response from the **PCC Countryside Access & Recreation Officer** is also noted:

The developer has identified that a number of public rights of way cross the site and will be affected by the proposed earthworks, being footpaths 40, 19, 90, 49, 7, 11 and 17 and bridleway 45.

Most of these paths are currently suspended via an Order under the Opencast Coal Order. During construction, an additional temporary closure of parts of bridleway 45 and footpath 19 will be required, to ensure public safety. The public rights of way that are suspended under the Opencast Coal Order are to be reinstated as part of the revised restoration scheme for the Nant Helen opencast coal site. As the applicant has identified, the earthworks will impact on the reinstated routes of the paths, due to the gradient of the slopes of the earthwork. Legal diversions will be required to allow for the earthworks to be constructed.

Planning permission does not, in itself, grant permission for the diversion of a public right of way; a separate legal process must be followed, which requires the making and confirmation of a public path Order. As noted in the Environmental Statement, the options for diverting these paths are under consideration and will be subject of a public consultation exercise. The proposed earthwork must not be constructed

over the existing lines of the paths, until such time as the legal diversion process is complete as it is an offence to develop over the line of a public right of way.

In addition, the proposed earthworks will affect registered commons BCL78 (Mynydd-y-Drum) and BCL136 (Land near Abercrave Station.) There are grazing rights recorded in the Register of Common Land as being exercisable over BCL78 (Mynydd-y-Drum) common; no grazing rights are registered over BCL136 (Land near Abercrave Station.)

Both commons benefit from a right of access on foot for recreation, under the Countryside and Rights of Way Act 2000, although the Nant Helen opencast coal site area is excepted from that right of access.

Common land does benefit from a high degree of legal protection. Under section 38 of the Commons Act 2006, it is unlawful for 'restricted works' to take place on common land without prior consent. Construction of the earthworks and associated drainage is likely to constitute restricted works: a separate legal process will need to be undertaken to seek common land consent for these works.

### External Consultees

**Natural Resources Wales** advise that they have reviewed the information submitted including the following documents:

- Nant Helen Complementary Restoration Earthworks Environmental Statement. Arup, April 2020 - in particular Chapters 5 and 6, 7, 9 and 11 with associated appendices and figures.
- Nant Helen Complementary Restoration Earthworks - Planning Statement - Arup, April 2020.
- Nant Helen Complementary Restoration Earthworks - Drainage Strategy - Arup, April 2020.
- Planning drawings CG1020 to CG1023 P01, Proposed Finished Levels - Arup, 06/12/2019
- Planning drawing CG1024 P01, Proposed track embankment and cuttings cross section - Arup, 06/12/2019

They advise that they continue to have significant concerns with the proposed development as submitted; have provided landscape impact advice which will be material to consideration of the application; and recommend that we should only grant planning permission if we attach a condition requiring a Construction Environmental Management Plan (CEMP) and include the following document within the conditions identifying approved plans and documents on the decision notice:

- Arup, 4th May 2020, Environment Statement
- Arup, 29th April 2020, Appendix 3B, Outline Construction Environmental Management Plan.

**Welsh Government Department for Economy and Infrastructure** raise no objection but in order to ensure that there are no significant impacts to the trunk road network during the construction phase, directs that the following condition is applied to any consent:

*Prior to development a Construction Traffic Management Plan (TMP) shall be submitted to and approved by the Local Planning Authority in consultation with Welsh Government (Transport), as highway authority for the Trunk Road Network (TRN) in Wales. The TMP shall detail the proposals for the movement of the 300-600 identified construction traffic trips to site with regard to proposed delivery routes and timing on the network.*

NOTE: Following clarification from the applicants that the 300-600 traffic movements referred to are on-site traffic movements, they have advised that they have no significant concerns on the trunk road network and their request for a directed condition is withdrawn.

**Powys County Council** No observations received as the impacts are being considered in detail under the identical application made to that authority.

**Brecon Beacons National Park Authority (BBNPA)** notes (in summary – see their detailed [Decision Letter](#)) that the site measures 416 hectares and is circa 100m from the Brecon Beacons National Park Authority (NPA) boundary at its closest point.

BBNPA identify (that Section 63 of the Environment Act (1995) sets out the statutory purposes of the National Park as follows: -

- To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; and
- To promote opportunities for the public understanding and enjoyment of the special qualities of the National Park

In accordance with section 62(2) of the Environment, any relevant Authority shall have regard to National Park purposes when performing any functions in relation to, or so as to affect, land in a National Park. The Special Qualities of the National Park may be significantly impacted by development proposals on the fringes of the National Park. PPW states that "planning authorities have a statutory duty to have regard to National Parks and AONB purposes.

The submitted Environmental Statement (ES) includes a Landscape Visual Impact Assessment (LVIA) which concludes that there will be significant adverse visual impacts during construction on 14 viewpoints (out of 18), 5 of which are noted to be recreational receptors within the National Park. On completion of the works (year 1), significant adverse visual effects are noted on 8 viewpoints (out of 18), 3 of which are noted to be recreational receptors within the National Park.

Given that significant adverse visual effects on the National Park are outlined in the ES from the north (areas within Powys County) the NPA has significant concerns with the impact the proposal will have on the special qualities of the National Park from this direction — namely the National Park's 'sweeping grandeur and outstanding natural

beauty' and 'working, living "patchwork" of contrasting patterns, colours, and textures' special qualities. These impacts around the northern areas may be significant for a considerable length of time, in advance of any landscape mitigation establishing.

Whilst it is up to the decision-maker regarding how the requirement on planning authorities to give regard to the purposes of the National Park and the National Park's identified special qualities are taken into account in determining this cross-boundary planning application, it is recommended that the decision-maker requests further information from the applicant to understand the visual impacts upon the National Park (from the north which is most relevant for Powys County Council's decision) and that a detailed and an effective landscape mitigation strategy is provided as part of this planning application.

**The Coal Authority** has reviewed the proposals and confirm that the application site falls within the defined Development High Risk Area. The Coal Authority records indicate the presence of recorded shallow coal mining; coal seams of workable thickness that may have been historically worked at shallow depth by illicit means, 73no. recorded mine entries (shafts and adits) and the site is within the boundary of a site from which coal has been removed by surface mining (opencast) methods.

The Coal Authority considers that an in-depth assessment of coal mining legacy has been undertaken by the applicant's technical consultants: ARUP. Therefore as per their recommendations, the exact ground conditions should be confirmed in order to inform the extent of remedial / mitigatory measures required to ensure that the development platforms are suitable for the development proposed and will be safe and stable for each respective land use (Planning Policy Wales paras 6.9.23 — 27).

The Coal Authority has no objections to this proposal subject to the LPA imposing a suitably worded condition to secure the site investigations as recommended by ARUP — Section 15.3 of Appendix 6A: Environmental Statement, May 2020).

**Dwr Cymru Welsh Water** notes that the proposed development site lies adjacent to a strategic asset in the form of a 500mm trunk watermain located to the west and north, along with various other public sewer and watermain assets. In this instance whilst it does not appear any part of the site lies within the protection zone of the 500mm watermain, measured 6 metres either side of the centreline, the site is located within the boundary of the permission granted for the wider restoration scheme of Nant Helen Surface Mine (Ref: 19/1899/REM) and in this respect we remind of the requirements of conditions 23 – 30, relating to water management, alongside conditions relating to blasting and vibration (15 – 19). Therefore offer no objection in principle subject to inclusion of Condition and Advisory Notes to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

**CADW** notes that the Environmental Statement (ES) has identified that the proposed development will have a minor, but not significant, impact on the setting of scheduled monument Bryn Llechwen Ring Cairn (reference BR327) and whilst there may be temporary impacts on the settings of the other scheduled monuments these will cease once the development is completed.

The ES also explains that there will be a direct and permanent, major adverse impact on the scheduled Tramroad at Ystradgynlais (GM399). This adverse impact will be significant and is contrary to national planning policy contained in section 6.1.24 of Planning Policy Wales 2018. Therefore, your authority will need to weigh this direct significantly adverse impact against the economic and other benefits. It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission.

**Glamorgan Gwent Archaeological Trust (GGAT)** – State that the ES work was undertaken to an agreed methodology, stated in the Written Scheme of Investigation (November 2019), and meets the current professional standards. The proposal will require historic environment mitigation.

In assessing the information concerning the historic environment, historic assets of both designated and non-designated status were identified. The Scheduled Monument of the Tramroad at Ystradgynlais (Cadw reference GM399) will be directly affected by elements of the proposal with a significant adverse effect, and as noted within the document, Scheduled Monument Consent must be obtained from Cadw prior to any development works to the Scheduled Monument, and we understand that the SMC application is in process. Should SMC be granted then any subsequent archaeological mitigation should be undertaken to an agreed methodology within a written scheme.

Non-designated historic assets within the development boundary that will be affected are listed in the assessment and ES chapter, and detailed in the mitigation section 8.10 and the tables 8.2a&b, and 8.4. This details that areas named would be subject to an archaeological strip, map and record, with a watching brief on Areas B and C (i.e. those unaffected by the modern mining operations). For those features which fall within GGAT's area and remit, we concur with the proposed mitigation and recommendations and recommend that the programme of archaeological work as mitigation should be undertaken to an agreed methodology within a written scheme, to be submitted to us as the archaeological advisors to Neath Port Talbot. This is following the Welsh Government Legislation and Policy. We therefore recommend a condition to be attached to any consent granted, recommending the submission of the written scheme and the programme of work to be implemented.

This will ensure detailed contingency arrangements, including the provision of sufficient time and resources to ensure that any archaeological features or finds that are located are properly investigated and recorded; it should include provision for any sampling that may prove necessary, post-excavation recording and assessment and reporting and possible publication of the results.

## REPRESENTATIONS

190 individual letters of notification were sent out to properties in and around Onllwyn / Seven Sisters on 22<sup>nd</sup> May 2020. In addition, numerous site notices were displayed in prominent locations in Onllwyn and Seven Sisters on 22<sup>nd</sup> May 2020 (as well as the associated publicity undertaken by Powys CC on their application).

The application was also advertised in the Evening Post on 27<sup>th</sup> May 2020 as an EIA development, affecting Public Rights of Way.

In response, to date one representation has been received by NPT, albeit that letter has been submitted by a resident who appears to be from Powys (and focussing on that area). Nevertheless as it has quoted this NPT application the issues raised are summarised as follows: -

- Serious concerns regarding the lack of transparency for community consultation.
- There has been limited notification to a few select households by post I have since heard and no opportunity for other residents of the ward to link in with their local community and county borough councillors to request socially distanced opportunities to discuss and consider any proposals; whether furloughed or working flat out throughout, covid measures has not allowed communities to meet as freely as needed to process complex proposals that are likely to have 2 to 3 decades of effect on our local community and quality of lives.
- There has not been the opportunity for a site visit by local community councillors with key people, experts and full community engagement.
- The current proposal seems pre-empt WAG's plans for GCRE but there are grave concerns re the size of the proposed embankment directly above Caehopkin and Brooklands Terrace re continued sloping and in the event of any future spillage due to construction failure and the proposed embankment sitting on top of historic coal mining activity which could add to any potential instability.
- Further the 'lagoons' pose further threat to instability of these embankments in the event of any leakage and water entering the embankment structure. The proposal to open old waterways, which were made redundant during the first phase of restoration, increases the possibility of flooding in the village and surrounding areas; Caehopkin already suffers from excessive run-off water and there does not seem to be a permanent commitment to the maintenance of these waterways.
- Common land should be re-instated to its original state, as per contractual agreement when consent for open cast mining and coal washing was originally given, as it is questionable whether the local community would wish to embrace the WAG final proposal when it becomes fully aware of the actual impact that the currently proposed site preparations are pre-empting.

### PRE-APPLICATION CONSULTATION (PAC)

As a 'major' development, the applicant undertook formal public consultation in accordance with the requirements of the Planning (Wales) Act 2015 and the Town and Country Planning (Development Management Procedure) Order 2012 (as amended), such period running from 18<sup>th</sup> February to 16<sup>th</sup> March 2020 (extended to 25<sup>th</sup> March in response to a request by one of the statutory consultees).

The consultation was extensive and involved information being sent out to:

- 182 community consultees, including 142 local ward members and chief officers of both Powys County Council and Neath Port Talbot County Borough Council and 40 community councillors at Onllwyn Community Council, Ystradynlais Town Council, Tawe Uchaf Community Council and Severn Sisters Community Council
- Eight local stakeholders including two MPs, two AMs and other local stakeholder groups

- Two landowners
- 902 residents;
- 25 businesses neighbouring the site; and
- All relevant Statutory Consultees

The applicant has provided the required [Pre-Application Consultation Report \(PAC\)](#) setting out who was consulted; how they were consulted; how they were informed about the consultation; the feedback received and how comments have been responded to or taken into account in the final application.

## REPORT

### *National Policy*

The Well-being of Future Generations (Wales) Act 2015 (WFG) imposes a duty on public bodies to carry out 'sustainable development' in accordance with the 'sustainable development principle'.

"Sustainable development" means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.

'Sustainable development principle' means that Local Authorities must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

In order to achieve this principle the Act introduces five ways of working to support decision making which ensures public bodies take account of:

- a. Long-term thinking – balancing the need to take action to address current issues with the need to meet long term needs of Wales.
- b. An integrated approach – considering how a body's objectives may impact upon the social, economic, environmental and cultural well-being and considering how an individual body's objectives impact upon other public bodies' objectives.
- c. Engagement – involving the people and communities with an interest in the wellbeing objectives, engaging them in finding sustainable solutions.
- d. Collaboration – acting collaboratively with other bodies, or different parts of a body acting together in a co-productive way, to assist in the achievement of the body's objectives.
- e. Preventative action – deploying resources to undertake action now in order to prevent problems occurring or getting worse.

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

The Environment (Wales) Act 2016 has been designed to complement the WFG Act. It imposes a 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”.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

### Building Better Places: The Planning System Delivering Resilient and Brighter Futures.

On 16<sup>th</sup> July 2020 the Welsh Government published [Building Better Places: The Planning System Delivering Resilient and Brighter Futures](#) which provides planning policy guidance for local planning authorities and the development industry on priorities for the planning system to deliver post Covid-19.

The guidance is to be read in conjunction with PPW, which contains the principles and policies needed for Wales to recover from Covid-19 in a positive manner, putting placemaking at the heart of future development.

It also empathises the importance of planning (and Planners) in the implementation of policies to aid in the recovery period, identifying opportunities, and bringing people together, thinking systemically and working strategically to shape the vision for better places and lead positive change.

The guidance includes a WG a commitment to follow through on infrastructure obligations which will go a long way in ensuring that the developments envisioned are delivered and the wider public benefits are maximised.

It also emphasises that development management decisions should focus on creating healthy, thriving active places with a focus on a positive, sustainable future for our communities. The planning system has an important role in supporting healthier lifestyles and reducing inequalities. This includes both direct and indirect opportunities such as the allocation of land for health facilities, ensuring good design and barrier free development, jobs and skills, improving air quality, soundscapes and protecting and improving access to recreation and natural green spaces. These can provide both physical and mental health benefits, improve well-being and help to reduce inequality.

WG will thus play its role in supporting the vibrancy of places and helping this people-focussed and placemaking-led recovery.

### National Planning Policy Context

Members’ attention is drawn to the following relevant national and local planning policies together with supplementary guidance.

## [Planning Policy Wales](#) (Edition 10)

PPW is supported by a series of more detailed [Technical Advice Notes](#) (TANs), of which the following are of relevance: -

- TAN 5 Nature Conservation and Planning (2009)
- TAN 11 Noise (1997)
- TAN 12 Design (2016)
- TAN 13 Tourism (1997)
- TAN 15 Development and Flood Risk (2004)
- TAN 16 – Sport, Recreation and Open Space (2009)
- TAN 18 Transport (2007)
- TAN 20 Planning and the Welsh Language (2017)
- TAN 23 Economic Development (2014)
- TAN 24 The Historic Environment (2017)

## Local Planning Policy Context

### *Neath Port Talbot Local Development Plan*

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

### Strategic Policies:

- **Policy SP1** Climate Change
- **Policy SP2** Health
- **Policy SP3** Sustainable communities
- **Policy SP4** Infrastructure
- **Policy SP6** Development in the Valleys Strategy Area
- **Policy SP11** Employment Growth
- **Policy SP14** The Countryside and the Undeveloped Coast
- **Policy SP15** Biodiversity and Geodiversity
- **Policy SP16** Environmental Protection
- **Policy SP20** Transport Network
- **Policy SP21** Built Environment and Historic Heritage
- **Policy SP22** Welsh Language

### Detailed Policies:

- **Policy SC1** Settlement limits
- **Policy I1** Infrastructure Requirements
- **Policy EC5** Employment Uses in the Valleys
- **Policy TO4** Walking and Cycling Routes
- **Policy EN2** Special Landscape Areas
- **Policy EN6** Important Biodiversity and Geodiversity Sites

- **Policy EN7** Important Natural Features
- **Policy EN8** Pollution and Land Stability
- **Policy M1** Development in Mineral Safeguarding Areas
- **Policy M3** Development in Mineral Buffer Zones
- **Policy TR2** Design and Access of New Development
- **Policy TR3** Safeguarding of Disused Railway Infrastructure
- **Policy TR4** Safeguarding Freight Facilities
- **Policy BE1** Design
- **Policy BE2** Buildings of Local Importance

*Supplementary Planning Guidance:*

The following SPG is of relevance to this application: -

- [Planning Obligations](#) (October 2016)
- [Pollution](#) (October 2016)
- [Open Space & Greenspace](#) (July 2017)
- [Renewable and Low Carbon Energy](#) (July 2017)
- [Design](#) (July 2017)
- [Development and the Welsh Language](#) (July 2017)
- [Landscape & Seascape](#) (May 2018)
- [Biodiversity and Geodiversity](#) (May 2018)
- [The Historic Environment](#) (April 2019) (incl. [Schedule of Buildings of Local Importance](#) and [SPG: Schedule of Designated Canal Structures](#))

### EIA and AA Screening

The application site exceeds the Schedule 2 threshold for development of this type as outlined within the Environmental Impact Assessment Regulation, and as identified above the application has been accompanied by an Environmental Statement.

The proposed development is not located within a zone of influence for any SAC, CSAC or Ramsar sites and as such it is considered that an Appropriate Assessment as set down within the Conservation of Habitats and Species Regulations 2017 is not required.

### ASSESSMENT

#### Issues

Having regard to the above, the main issues to consider in this application relate to the following: -

- Landscape and visual impacts
- Geotechnical / Land Stability Issues
- Impacts on Local Amenity including nearby residential properties
- Impacts on Cultural Heritage
- Impact on highway safety and rights of way
- Impacts on biodiversity
- Ground water / contamination

- Common Land
- Socio-economic impact; and
- Whether any identified impacts are outweighed by any identified benefits of the development (i.e. the 'planning balance')

### Principle of Development

The applicant states that the proposed earthworks would reconcile parcels of land that comprise the present day and wider past extents of coaling operations at Nant Helen Surface Mine. To all intents and purposes this includes land associated with the site's western extent that will be restored at the end of current coaling operations and land associated with the site's northern, eastern and southern extents that has already been restored following the end of past coaling operations.

The applicant also considers that the proposed earthworks would provide a comprehensive, flexible and adaptable landform across the entire site that could support a wide range of future uses including agriculture, woodland and nature conservation; and/or amenity, leisure, tourism and employment.

A core principle of achieving sustainable development is using previously developed land in preference to greenfield land where possible. The applicant considers that most of the site associated with the present-day extent of the surface mine would satisfy the definition of previously developed land and consequently development of it would be broadly acceptable. However this view is not accepted since in this case provision for restoration has either been made by the imposition of a planning condition or it is land where the remains of the activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings. In both cases these are exclusions from the definition of previously developed land and the proposal cannot therefore be considered to be on 'brownfield' / previously developed land.

Nevertheless, the application proposes earthworks which are complementary to the Nant Helen site restoration and will include associated drainage infrastructure and areas of landscaping and habitat creation to create a flexible and adaptable area of land that could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses.

LDP Policy SP6 sets out the main measures that will be taken to implement the strategy of reinvigorating the valleys area, noting that the local economy and communities will be enhanced and reinvigorated and the distinctive environment will be protected through measures including taking a flexible approach to encourage employment uses, an objective echoed by Policy SP11 (Employment Growth).

Given its Valleys location and relationship to numerous communities surrounding the site, both in Neath Port Talbot and Powys, this proposal is not only considered to accord with the wider objectives within PPW and the LDP to place sustainable placemaking at the heart of the planning process, and notably in the NPT Valleys area, but also the WG's recent policy guidance [\*Building Better Places: The Planning System Delivering Resilient and Brighter Futures\*](#) which focusses on post Covid-19 recovery in Wales. In this respect, the scheme will deliver healthy, thriving active places with a focus on a positive, sustainable future for our communities. This would be whether it is focussed

on leisure and tourism opportunities which improve access to recreation and natural green spaces, or through creation of direct and indirect opportunities for barrier free development, jobs and skills.

In this respect, while this application does not propose specific tourism or industrial uses (that would require separate consent), agricultural, conservation or leisure uses on the new landform would amount to development appropriate for a countryside location which accords with the above national Policy objectives. In this respect, the supporting text to Policy SC1 (settlement limits) emphasises that whether specific development proposals are appropriate or suitable outside settlement limits will be assessed with reference to the relevant topic policies within this Plan and national policy, while in principle the proposal is considered to accord with the objectives of Policies SP6 and SP11 to reinvigorate the Valleys.

The acceptability of the proposals thus comes down primarily to an assessment of impacts. While this largely considers the specific impacts of the works themselves, the reasoned justification behind submission of the application at this stage (relating to the potential for a rail centre of excellence at the site) is considered as part of the overall planning balance at the end of the assessment.

### Landscape and Visual Impacts

PPW states that the countryside is a dynamic and multi-purpose resource. In line with sustainable development and the national planning principles and in contributing towards placemaking outcomes, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological, cultural and agricultural value and for its landscape and natural resources.

The need to conserve these attributes should be balanced against the economic, social and recreational needs of local communities and visitors. Fostering adaptability and resilience will be a key aim for rural places in the face of the considerable challenge of maintaining the vibrancy of communities and availability of services as well as contributing to the Cohesive Communities well-being goal (para 3.34).

PPW states that LANDMAP is an important information resource, methodology, and monitoring baseline for the landscapes of Wales, which can help inform planning for the sustainable management of natural resources in an area. LANDMAP describes and evaluates the physical, ecological, visual, cultural and historic aspects of the landscapes of Wales, and provides the basis of a consistent, quality assured national approach to landscape assessment (para 6.3.19).

PPW also states that where adverse effects on landscape character cannot be avoided, it will be necessary to refuse planning permission (para 6.3.4).

The proposed development's landscape and visual impact has been considered within Chapter 9 of the Environmental Statement, its figures and appendices which include; Context Plan, ZTV Plan, Viewpoint Map, Landscape Character Area Plan and Viewpoint Photography; Assessment Methodology, LANDMAP Analysis, Baseline Environment and Assessment Tables. The ES advises that the impacts have been assessed based on worst-case winter conditions where screening by vegetation is least effective.

Effects on landscape and visual receptors are closely related but separately assessed. Landscape receptors are its characteristics, key features and special qualities, and visual receptors are people and changes to their visual amenity.

### *Landscape Character*

Landscape Character Areas (LCA's) are derived from existing landscape character assessments (where available) and from analysis of LANDMAP aspect areas.

The part of the overall site within NPT is designated by the LDP as a Special Landscape Area (Policy EN2 refers) wherein development "*will only be permitted where it is demonstrated that there will be no significant adverse impacts on the features and characteristics for which the Special Landscape Area has been designated.*" The SLA does not extend into Powys CC, but the ES has assumed that the defining features and characteristics of the SLA would continue beyond the county boundary.

Other than a small area in the south eastern part of the site which extends into the Head of Dulais Valley Landscape Character Area (medium value), the site falls within the Nant Helen Reclaimed Uplands Landscape Character Area, a landscape defined by past and present mining activity. Present mining activity dominates the north and eastern extents of the character area and there is evidence of previous mining activity to the south. Areas of upland moorland with predominantly rough grassland and bracken landcover and further areas of marsh and grassland. Large areas are used for grazing. The overburden mound associated with the mining activity stands as a prominent and evidently man-made feature visible from the wider landscape. A number of PROWs cross the character area, many of which are temporarily suspended through the mining site. Mining activity within the character area is a detractor from its use for recreational purposes. Pylons run from east to west along the southern extent of the character area and contribute to the overall large-scale industrial character. The Ystradgynlais Scheduled Monument Tramroad is further evidence of the industrial history of the character area and the importance of mining in the historical development of the wider landscape. The value of this Landscape Character Area is assessed as Low.

In Powys, a small area of the north western part of the site also extends into the Wooded Tawe Valley Landscape Character Area, which has a medium value.

The ES assessment concludes that the Nant Helen Reclaimed Uplands LCA has the capacity to accommodate the Project without affecting its overall integrity across much of the LCA, however it is susceptible to the loss of its key features. The LCA would experience a moderate adverse effect resulting from the proposed development, where earthworks would reduce the legibility of key features such as the Tramroad at Ystradgynlais and the alteration of previously restored land. During the construction phase the impact on the Wooded Tawe Valley (PCC) would be minor adverse and the impact on the Head of Dulais Valley (NPT) would be negligible.

Post construction, the introduction of engineered earthworks will result in the loss of key features of the landscape character area such as the Tramroad at Ystradgynlais and landcover that has already been restored. However, in combination with the Nant Helen Restoration, the loss of restored landcover will be offset by the removal of the existing

opencast void and creation of approved restoration landform, and loss of mining activity and the reduced prominence of the overburden mound and increased naturalistic character of the landform. In this respect the completed proposals in combination with proposals for restoring the surface mine, would plainly achieve betterment compared to the current environmental baseline and the negative effects these operations have on the landscape.

The proposed earthworks have been assessed in combination with proposals for restoring land currently subject to coaling operations at Nant Helen Surface Mine. The mine currently dominates and has a significant adverse effect on the area's landscape character and fundamentally its restoration will improve the landscape character.

On balance, it is concluded that the earthworks in combination with the restoration of Nant Helen Surface Mine will have a mix of adverse and beneficial effects on the landscape character area and any adverse construction phase effects will be sufficiently limited in temporal scope and are considered acceptable.

### *Visual Impact*

The Environmental Statement (ES) considers 18 different viewpoints surrounding the site, of which three (VP16, 17 and 18 are within NPT – see Figure 3 below). The methodology for the assessment considers the sensitivity of the receptor, the magnitude of change and the significance of the effect. The overall significance of effect is based on the combined overall magnitude of change as a result of the completion of both the Project and Nant Helen Restoration.

The NPT Viewpoints are as follows: -

- **Viewpoint 16** View north / north-west from properties on the A1049. This viewpoint is representative of views experienced by residential receptors.
- **Viewpoint 17** View west from Onllwyn, Cemetery. This viewpoint is representative of visitors to the cemetery
- **Viewpoint 18** View north from Sarn Helen Roman Road and Byway 28/39.N.Hi/1, along the ridge of Hirfynydd. This viewpoint is representative of recreational users of the footpath.

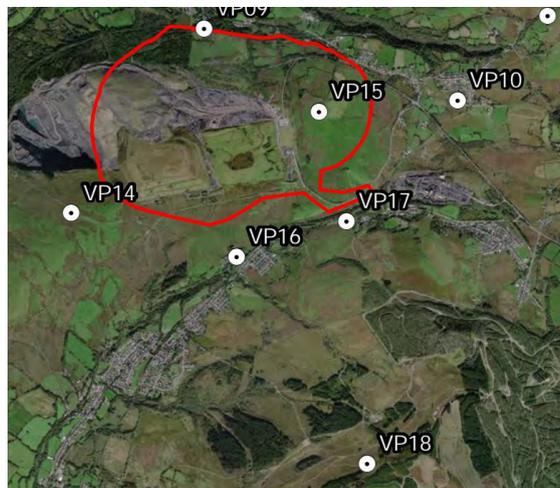


Figure 3: Viewpoints (Extract from ES)

## Construction Impacts

The ES identifies the extent of impacts at construction (during the 73 week construction period) on the viewpoints within NPT as follows: -

Table 1: Potential Visual Effects due to Construction Impacts

<b>Receptor</b>	<b>Sensitivity of Receptor</b>	<b>Magnitude (prior to mitigation)</b>	<b>Significance (prior to mitigation)</b>
VP16	Medium	High (Adverse)	Major (Adverse)
VP17	Medium	Low (Adverse)	Moderate (Adverse)
VP18	High	High (Adverse)	Major (Adverse)

For example, at VP16 construction will be visible within 500m of the viewpoint and there will be direct views of construction activity which will be visible across a wide section of the view, and will be extended beyond the existing Nant Helen restoration programme. The overall significance of effect is thus considered to be Major (Adverse).

At VP17 construction activity will be visible within 250m of the viewpoint, with the closest construction activity being the construction of the retaining wall to the north (albeit with intervening vegetation filtering views). Other works will be visible including excavation and transportation of material from the prominent overburden mound.

For VP18, due to the central location of the site in the wider panorama, in combination with the Nant Helen Restoration works, the overall magnitude of change will be High (Adverse) with excavation and transportation of material from the prominent overburden mound visible.

### *On Completion*

The ES identifies the extent of impacts at on completion on the viewpoints within NPT as follows: -

Table 2: Potential Visual Effects due to the on completion impacts of the Project.

<b>Receptor</b>	<b>Sensitivity of Receptor</b>	<b>Magnitude (prior to mitigation)</b>	<b>Significance (prior to mitigation)</b>
VP16	Medium	Negligible (Beneficial)	Negligible (Beneficial)
VP17	Medium	Negligible (Adverse)	Negligible (Adverse)
VP18	High	Low (Beneficial)	Minor (Beneficial)

The above impacts are 'prior to mitigation', and the ES notes that the incorporation of mitigation would result in reduced significance of effects and a slight reduction in adverse effects within the first 5 years due to mitigation planting. Once mitigation planting has established in 10 – 15 years it is anticipated there will be no residual significant landscape and visual effects.

The ES also states that once the future use of the earthworks has been established, the development of a Landscape Strategy is recommended to ensure the surrounding landscape is fit for purpose and gives consideration to the local landscape character. While a significant focus will be on the planting of the northern embankment (given the National Park impacts described below) the landscape strategy will be expected to consider the whole of the site including areas in NPT.

Having regard to Policy EN2 (and general countryside protection policies) it is thus concluded the landscape and visual impacts of the development, while major (adverse) during construction, would – even prior to mitigation – not have a significantly adverse impact on the features and characteristics for which the Special Landscape Area has been designated, such that the proposal would comply with Policy EN2.

### Impact on National Park

PPW confirms that planning authorities have a statutory duty to have regard to National Park's purposes. This duty applies in relation to all activities affecting National Parks, whether those activities lie within, or in the setting of, the designated areas. The designated landscapes should be drivers of the sustainable use and management of natural resources in their areas, and planning authorities should have regard to their identified special qualities in the exercise of their functions and any relevant management plans (para 6.3.5).

In this case the site is on the periphery of the Brecon Beacons National Park which is located approximately 96m away from the development at its closest point, and therefore, while the impacts arising from the development are predominantly (if not wholly) due to the site extent within Powys, the Authority will nevertheless need to have regard to the impact on the National Park both directly and on its setting.

In this respect both NRW and BBNPA have expressed concerns in relation to its visual impact when viewed from the Brecon Beacons National Park. BBNPA state that the proposals would be prominent from several areas within BBNP which are of high scenic quality and sensitivity, with the Environmental Statement (ES) confirming that there would be significant adverse visual effects on views from the BBNP (specifically viewpoints 1, 2, 3, 4, 5 and 11) and towards the BBNP (specifically viewpoint 18 in NPT) during construction.

These effects will result from the visibility of construction activity. Receptors will have views of the removal of coniferous woodland plantation on the northern side of the opencast mining site and overburden mound. The transportation and placement of material for the formation of the embankment will be visible to the east. To the south-east, direct views of the excavation works for the cutting will be visible, this includes the removal of material from the south-eastern corner of the overburden mound.

The ES also confirms that there would be major adverse visual effects on views from viewpoint 5 (within BBNP) and moderate adverse visual effects from 5 other locations, 3 of which are in BBNP (specifically viewpoints 2, 3 and 4) immediately after completion of the construction period.

The loss of woodland plantation and mature vegetation / field boundaries to the south of the A4221 will be noticeable. The view will instead comprise the grassed slope of the northern embankment of the Project that changes the gradient of the topography. There will be a noticeable difference in the scenic quality of the view due to the loss of complexity and the introduction of engineered form.

The proposed mitigation planting of the northern slopes of the northern embankment will help integrate the development into the surrounding landscape at approximately 15+ years, which the applicant states could be accelerated if larger stock is used for planting which would lead to a perceptible integration of the engineered landform within the first 5 years. However BBNPA are not convinced that this would be the case. In addition NRW considers that to be effective, the planting needs at least 15 years to establish in order to achieve a non-significant effect on the National Park, which is largely due to the challenges of establishing trees and shrubs on colliery spoil. Therefore, they request a condition to provide for a minimum 15 year period to achieve the desired effect. However, even after 15 years, assuming all mitigation planting has established successfully, NRW considers that this will leave an engineered rather than more naturalistic landform. Indeed BBNPA agree that the planting would reduce but not totally alleviate the significance of adverse effects until at least year 15.

The assessment recommends that a detailed Landscape Strategy is developed, which will be key to the establishment of the tree and woodland planting that ensure the successfulness of the mitigation planting becoming adequately established on colliery spoil. While a significant focus will be on the planting of the northern embankment the landscape strategy will be expected to consider the whole of the site including areas in NPT.

While BBNPA has recommended that the proposed Ecological Management and Monitoring Plan (EMMP) and landscape strategy should be combined into one Landscape Ecological Management Plan (LEMP) to ensure consistency in delivering the mitigation objectives, Officers consider that these should be retained as two separate documents albeit they would work together to deliver on the required ecological and landscape objectives.

Given the comments of NRW, BBNPA and notably the Council ecologists, it is considered reasonable the landscape strategy/Plan should cover a period of 20 years (5 years establishment plus 15) given that it would potentially take that long to mitigate the impacts and also include a mechanism for its extension should the planting need longer term management to achieve the desired effect. This is therefore the subject of an appropriately worded condition.

It is thus clear that there will be an adverse visual impact of receptors in the BBNP during construction and potentially for at least 15 years post-construction. That impact must be given significant weight in the planning balance to be applied in this case.

Brecon Beacons National Park Authority has significant concern that the proposal will have adverse impacts on one of the National Park's statutory purposes namely "*to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park*". The NPA also have significant concern that the proposal will adversely impact on two of the Special Qualities of the Park — its "*sweeping grandeur and outstanding natural beauty*" and the "*working, living "patchwork" of contrasting patterns, colours, and textures*".

It should be noted that PPW states that in National Parks or AONBs, special considerations apply to major development proposals which are more national than local in character. Major developments should not take place in National Parks or AONBs except in exceptional circumstances. This may arise where, after rigorous examination, there is demonstrated to be an overriding public need, refusal would be severely detrimental to the local economy and there is no potential for locating the development elsewhere or meeting the need in some other way. Any construction and restoration must be carried out to high environmental standards.

Consideration of applications for major developments should therefore include an assessment of:

- the need for the development, in terms of national considerations and the impact of permitting it or refusing it upon the local economy;
- the cost of and scope for providing the development outside the designated area or meeting the need for it in some other way; and
- any detrimental effect on the environment and the landscape, and the extent to which that could be moderated and/or mitigated. (para 6.3.10).

It therefore stands to reason that if these exceptions would apply inside National Parks then they can also reasonably be applied to developments in areas which may impact on the setting of National Parks.

Accordingly the harm arising from the development in landscape and visual terms - which as concluded above would be adverse for the first 15 years - will thus need to form part of the overall assessment of the proposals ('the planning balance' – see later in report).

### Geotechnical / Land Stability Issues

PPW10 recognises that development can result in instability which may affect both the development itself and the land surrounding it (para 6.9.22).

It states that when considering development proposals planning authorities should take into account the nature, scale and extent of ground instability which may pose direct risks to life and health, buildings and structures, or present indirect hazards associated with ground movement, including mine entry collapse. Slopes, embankments, cuttings and underground cavities can themselves be put at risk from inappropriate neighbouring development and, where relevant, land stability should be addressed, and appropriate mitigation measures secured to protect both existing assets and proposed development itself (para 6.9.23).

PPW10 also recognises that made ground, the presence of tips and shallow coal workings are extensive in some parts of Wales and their proximity to the surface could present potential instability risk to future development (para 6.9.24).

PPW10 therefore states that planning decisions will need to take into account:

- the potential hazard that instability could create to the development itself, to its occupants and to the local environment; and
- the results of a specialist investigation and assessment by the developer to determine the stability of the ground and to identify any remedial measures required to deal with any instability (para 6.9.25)

PPW10 concludes that where acceptable measures can overcome instability, planning permission may be granted subject to conditions specifying the necessary measures. If instability cannot be overcome satisfactorily, the authority may refuse planning permission (para 6.9.27).

The geological impact and potential hazards of the proposed development has been considered within Chapter 6: Ground Conditions of the Environmental Statement and its appendices. The potential impact/hazards have been assessed in the context of geological, land instability, contamination and remedial requirements. It is recognised that ground water and surface water have a close interrelationship with geology, but these are considered separately in this report within the Hydrological section below.

It is noted that significant public concern has been expressed by Powys residents on the Powys application regarding the size, height and stability of the proposed embankment along the northern boundary and the perceived danger that embankment poses to the residents of Caehopkin and users of the Sustrans Cycle Route (in particular) should it fail. That perceived danger has given rise to speculation of possible outcomes comparable with the Aberfan Mining Disaster of 1966. Objectors refer to the long history of underground and surface mining, sloping ground, drainage issues and surface ground conditions as the basis for their concerns about the stability of the proposed embankment.

Although the majority of such issues do not affect the land within NPT, nevertheless the following assessment (as due to be reported to PCC) is included for purposes of clarity:

The concerns of local people in relation to the stability of the embankment above their properties are understood. However, it must be noted that this proposal is not comparable to the situation of the coal tip which gave way and resulted in the Aberfan Mining Disaster over 50 years ago. The Inquiry into the Aberfan Mining Disaster identified specific reasons why that disaster occurred, primarily (but not exclusively) relating to construction methods, the lack of drainage infrastructure and the composition of some of the material within the tip. Some 50 years on there is a greater understanding of the technical engineering requirements for tips and embankments and detailed consideration will be required in relation to ground conditions and construction methods. It should be noted that a significant number of roads are successfully built every year on embankments with varying underlying ground conditions.

The desk-based assessment undertaken in Chapter 6 of the Environmental Statement has identified the ground conditions expected beneath the embankment – old mine workings and mine entries; opencast backfill of varying depths; the stratigraphy of the undisturbed areas of the Middle and Lower Coal Measures Formations and the local hydrology. Parts of the site have been extensively worked through surface mining activities since c.1946 with opencast activities still ongoing within the Nant Helen site. Coal mining activities have constantly altered the topography of the site over the last century and the geological environment is varied with many features largely pertaining to coal mining, such as outcropping, entries, drifts, shafts and seams. It is accepted that all these features can potentially create land instability that could constrain the proposed development if not properly considered.

The submitted assessment considers that sufficient published information is available to create a preliminary ground model and identify the required mitigation measures. The assessment concludes that no constraining geological features have been identified and suggests that planning conditions would be an appropriate mechanism for securing the detailed design and ongoing monitoring of both ground instability and contamination on completion of the proposed earthworks. This is considered by the applicant to be sufficient at the initial design stage to inform the environmental impact assessment. It also acknowledges that specific intrusive and non-intrusive ground investigations may be required to inform the detailed geotechnical design of the proposed scheme.

The detailed geotechnical design of the scheme would ensure slope stability of the ground, cuttings and embankments are adequate for the selected development option. The design would consider ground hazards associated with historical mine workings and subsidence due to potential change in groundwater conditions. This would include a detailed mining and hydrogeological impact assessment, and potentially treatment of shallow mine workings. Should mine workings treatment be required any impacts on hydrogeology would be assessed through detailed studies on design mitigation. The requirement for the Local Authority to approve a detailed geotechnical design can be imposed by condition which will ensure the appropriate safeguards are in place. The design will also consider the stability of the former opencast backfill of the Abercraf/ Gwaunton site, although having been in situ for over 45 years it is anticipated that any ground settlement associated with the opencast activity will have long since ceased.

The above assessment demonstrates that even for the substantial engineering operations on the northern embankment, detailed geotechnical and drainage solutions can be conditioned to provide the required level of certainty that there would be no unacceptable impacts arising from the operations. Accordingly, and given that the extent of 'cut and fill' on the NPT side is limited, as are the nearby areas in Powys' area, it is concluded that sufficient information has been submitted to demonstrate that there are technical solutions capable of ensuring ground stability is remediated where necessary. Conditions are thus imposed to address such matters.

### *Impact on Coal*

The Coal Authority has confirmed that the application site falls within the defined Development High Risk Area, and that their records indicate the presence of recorded shallow coal mining; coal seams of workable thickness that may have been historically worked at shallow depth by illicit means, c.73no. recorded mine entries (shafts and adits)

and the site is within the boundary of a site from which coal has been removed by surface mining (opencast) methods.

Whilst the Coal Authority has made no specific comments on the proposed restoration works, as the proposal is to include the construction of a landform that could be used for a number of purposes once restored (ES section 6.3.1), they advise that the applicant will need to ensure that all coal mining legacy has been fully assessed and all risks mitigated to ensure any future platforms for built development are suitable for the development proposed and will be safe and stable (Planning Policy Wales paras 6.9.23 – 27).

They further note that the applicant's technical consultants (ARUP) have carried out an in-depth review of extensive range of coal mining / geological information and highlight the risks associated with former mining activities as 'risk zones' (ES Figure 8) and in relation to the design of any potential testing track (Appendix 6A of the ES - Section 9). Accordingly they welcome the comments made (Section 15.3) that both intrusive and non-intrusive works are to be undertaken in order to confirm the exact ground conditions (to include location / condition of mine entries; alignments of opencast highwall(s)) and to inform the extent of remedial actions required (including layout to avoid mine entries / opencast highwalls) to mitigate the risks to the future development at this site. Subject to conditions to secure such site investigations (as recommended by ARUP – Section 15.3 of Appendix 6A: Environmental Statement, May 2020), they therefore offer no objections.

They further advise that the nature and extent of the ground investigations and any subsequent treatment works will require the Coal Authority's written consent (from their Permitting team) prior to commencement of the works as part of the permitting process.

### Land Contamination

In relation to land contamination, PPW10 states that where land contamination issues arise, the planning authority will require evidence of a detailed investigation and risk assessment prior to the determination of the application to enable beneficial use of land, unless it can already be established that remedial measures can be employed. Where it is known that acceptable remedial measures can overcome contamination, planning permission may be granted subject to conditions specifying the necessary measures and the need for their implementation, including provision for remediating any unexpected contamination which may arise during construction (para 6.9.19)

Features of made ground and backfilling of mining excavations could contain contamination, especially considering the extensive period of mining operations at the site which could have included contamination arising from fuel spillages etc. During construction any likely significant effects will come from transporting potentially contaminated material including residue from plant and machinery that can pollute the environment, both onsite and offsite where there are pathways to external receptors. It has been considered that by using best practice measures within an industry standard Construction and Environmental Management Plan the significance of effects during construction will be mitigated to negligible. After completion, any land contamination encountered during construction will have been remediated and therefore the final landform, left undisturbed, will not pose a risk to human or environmental health.

The Contaminated Land Officers from both NPT and Powys have liaised and raise no objections. Nevertheless, they also note that while the proposal may relate to a proposed Global Rail Centre of Excellence, the site could be used as public amenity land which from a land contamination point of view would be considered much more sensitive. Accordingly, this would need a desk study with a conceptual site model based on the most sensitive potential end use. This can be conditioned to ensure the appropriate reports are based on the specific end use.

In addition, while the application indicates that all backfilling will take place with site won material, a condition is recommended preventing the importation of material unless it is approved in writing first so that we could ensure that it is chemically suitable for whatever the end use would be.

NRW has reviewed the Desk Study within the ES from which they note that further site investigation for land contamination will be undertaken. While suggesting that targeted sampling in areas of known contamination risk is undertaken, they state that the controlled waters at this site are not of the highest environmental sensitivity and therefore have not provided detailed site-specific advice or comments with regards to land contamination issues. They recommend that the requirements of PPW and the Environment Agency Guiding Principles for Land Contamination (GPLC 1, 2, and 3), March 2010, should be followed.

Having regard to the above, it is considered that subject to conditions, the proposed development would raise no significant detrimental impact to the wider environment, and through suitable remediation would not result in harm to the quality of controlled waters or human health. The proposal therefore broadly accords with Policies SP16 and EN8 of the Local Development Plan.

#### Impact on Amenity

Policy EN 8 seeks to ensure that any 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 will not be permitted. This includes from noise pollution.

In specific reference to developments which could create noise, TAN 11 states at Paragraph 8 that "Local planning authorities must ensure that noise generating development does not cause an unacceptable degree of disturbance. They should also bear in mind that if subsequent intensification or change of use results in greater intrusion, consideration should be given to the use of appropriate conditions."

#### *Noise Impacts – Construction*

The proposed development's impact in respect of noise has been assessed within Chapter 10: Noise and Vibration of the Environmental Statement. The assessment of significant environmental effects has focused on impacts arising from construction of the proposed northern embankment (in Powys) and identified 5 sensitive receptors for which assessments are made, all of which are to the north of the site (as shown on Figure 4 below) and in Powys. Receptor 1 is at Caehopkin, Receptor 2 is at Brooklands Terrace,

Receptor 3 is at the Scout Hall, Receptor 4 is at Cefn Byrle and Receptor 5 is at Llwyncelyn Cottages.

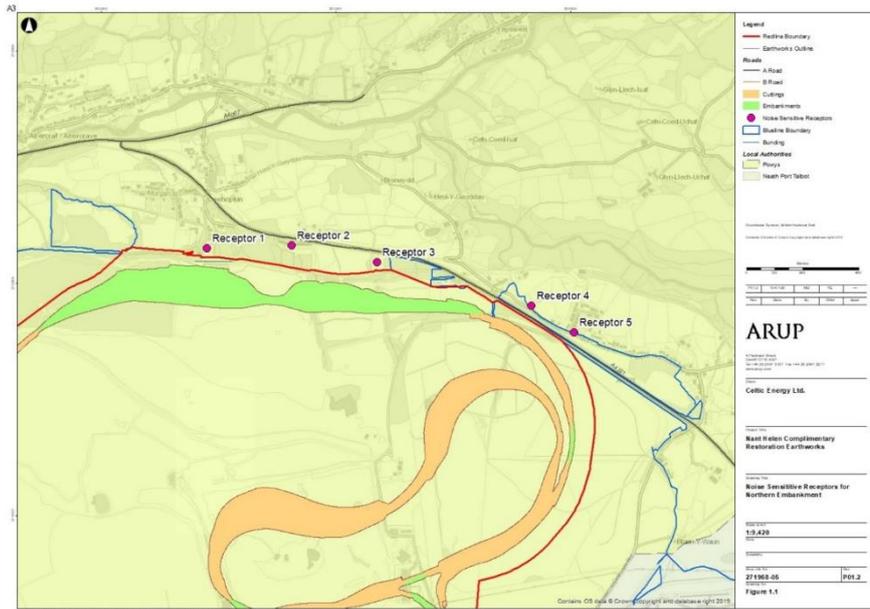


Figure 4 : Nearest (assessed) Noise Sensitive Residential Receptors

The potential for noise disturbance at residential receptors due to heavy plant and equipment that could be used during construction (notably of the embankment) has been considered in line with the recommendations of BS 5228, Part 1, 2009. Under this approach, the adverse impact threshold at an existing residential dwelling is given as 65 dB Laeq during normal weekday working hours (0700 to 1900 hours) and between 0700 and 1300 hours on Saturday. The proposed hours of working for the construction of the embankment fall within these hours and therefore these levels are considered to be the maximum that should apply to those works.

Noise levels have been predicted based upon the construction plant sound power level and typical percentage on-times, with corrections applied to allow for distance, reflections and screening attenuation where appropriate. Without mitigation, the noise levels predicted at Receptors 2, 3, 4 and 5 (57, 60, 54, 51dB respectively) were well within the 65dB threshold but 66dB was predicted at Receptor 1 in Caehopkin. A noise fence measuring approximately 50m in length and 5m in height is therefore proposed between the embankment and receptor 1. This mitigation reduces the predicted noise level at receptor 1 to 61dB.

The operation of the Nant Helen Surface Mine is subject to a noise condition which specifies the following:

*'Noise arising from operations at the site as measured at any noise sensitive location shall not exceed background (LA90) plus 10dB LAeq, 1hr or 55dB LAeq, 1hr (free field), whichever is the lesser, during normal working hours (0700 to 1900 hours Monday to Friday excluding Bank/Public Holidays and 08.00 and 12.00 hours on Saturdays). At all other times the noise arising from operations at the site shall not exceed 42dB LAeq, 1hr (free field) at any noise sensitive location.'*

Within the ES, the only identified significant noise impacts arising from construction are in Powys's administrative area, although with mitigation on the perimeter of the site (in the form of a 5m screen referred to above) noise levels to receptor 1 would be controlled and prevent a significant effect. Such matters are, however, dealt with by PCC in their assessment / report, along with specific working hours restrictions on development in that area (which are imposed on this application only for purposes of consistency).

Looking specifically at properties within NPT, the ES (10.3.3) indicates that residential properties located on the southern side of the site boundary (i.e. in NPT) were not assessed due to the distance separation between the main embankment construction works and the residential properties. It states that "*it is unlikely the embankment construction works would result in a significant effect at residential properties located in these areas*".

Nevertheless, the Council's EHO has liaised with the applicants' noise consultants in respect of the potential for impacts on residents in NPT related to the construction of the southern embankment in the southern end of the site boundary which is relatively close to the residential properties on Onllwyn Road (see figure 5 below).



Figure 5: Proximity of southern embankment to Onllwyn

In response, the consultants have clarified that in the ES no significant effect was identified at receptor 4 (see Figure 4 above) where an approximate shortest distance used for the assessment was 95m. The predicted construction noise levels at Receptor 4 is about 10dB lower than the threshold level. Therefore they have stated that the construction activities associated with the works in the southern area is unlikely to exceed the threshold levels at the residential properties on Onllwyn Road, directly facing the site based on the following assumptions:

- The footprint of the southern embankment is relatively smaller than the northern embankment, therefore it is likely similar or less construction activities would be undertaken in this area;
- On the existing ground profile across the site, it is understood the geometry in this area is similar to the north; and
- An approximate shortest horizontal distance between the southern earthworks and those properties on Onllwyn Road is 180m

Subject to a robust CEMP being submitted under condition (a draft having been submitted to date), the Council's EHO has confirmed he is satisfied with the consultants submissions and thus the impacts during construction.

### *Noise Impacts – After Use*

In terms of the potential after use for the site, it is considered that only the potential rail testing facility would be likely to have impacts on residential receptors or users of the public rights of way, although any such impacts are neither assessed nor up for consideration as part of this application. Leisure after uses (such as walking, cycling and horse riding) would, by their very nature, open up the site for public benefit but would lead to greater enjoyment of the area without having any demonstrable impact on the amenity of nearby properties.

### *Noise – Conclusion*

In view of the foregoing, subject to the inclusion of a condition requiring a robust CEMP (including working hours) to control construction and operational activities in the interests of local amenity, it is considered that the proposal would not lead to unacceptable levels of noise to warrant refusal of the application on these grounds such that the development would accords with Policy EN8 of the Local Development Plan.

### *Air Quality*

For the construction phase, the most important consideration is dust, since without appropriate mitigation, dust could cause temporary soiling of surfaces, particularly windows, cars and laundry. In respect of such matters the ES advises as follows: -

The nearest sensitive receptors within NPT are located approximately 500m away from proposed dust generating activities. In human health terms, background annual PM10 concentrations are low (9-10ug/m<sup>3</sup>). There is a very low risk that air quality objectives will be exceeded by the proposed activities provided that good practice measures are followed. An assessment of mineral dust impacts on human health receptors is screened out.

The mineral type at the proposed site is soft rock according to the British Geological Survey. Due to the nearest sensitive receptors being more than 500m away from the proposed dust generating activities and the low background annual PM10 concentration it is considered that, in accordance to the IAQM mineral dust guidance (IAQM 2016, Guidance on the Assessment of Mineral Dust Impacts for Planning), a detailed dis-amenity dust impact assessment is not required."

It is recognised that the principal sources of dust are likely to be associated with the excavation and deposit of soil and overburden and the movement of vehicles within the site. In this respect mineral dust coarser than 10µm may constitute a 'nuisance' due to soiling of surfaces but does not pose a risk to human health. Fine particles of 10µm or less, referred to as PM10 can be inhaled and depending on the concentrations and the nature of the particles, they can be associated with health impacts. The very fine particles of 2.5µm or less are referred to as PM2.5.

There are no statutory or recommended levels of dust deposition which constitute an acknowledged nuisance, but 200 mg/m<sup>2</sup>/day is often quoted as a threshold for nuisance dust. Large dust particles, which make up the greatest proportion of dust emissions from this type of earthwork proposal (up to 95%) will largely deposit within 100m of the source. Intermediate particles can travel further but it is unlikely that adverse impacts will occur at distances in excess of 250m. Fine particles can travel further from the source so for PM10 the potential human receptors within 500m are considered.

While the Council's Air Quality Officer raises no objections to the development, he does note that based on previous knowledge of receiving complaints from Heol y Felin when the Nant Helen mounds were being formed (shifting of overburden), he would recommend that opencast style bowsers are used to minimise dust emissions in the same manner has been the case at Celtic Energy's opencast sites. Such matters can be adequately addressed through the submission of a Dust Management Action Plan which along with a condition requiring approval of a final Construction Environmental Management Plan (CEMP) which would include dust management controls, would ensure the proposal would be acceptable in terms of air quality and accord with Policy EN8 of the Local Development Plan.

#### Impact on Heritage Assets

*The Historic Environment (Wales) Act (2016)* stands at the centre of an integrated suite of legislation, policy, advice and guidance for the historic environment, with National policy incorporated within Chapter 6 of *Planning Policy Wales* (Edition 10) and guidance in *Technical Advice Note 24: The Historic Environment* (May 2017).

In addition to the above, Cadw has the following guidance which is of relevance to this proposal: -

- *Conservation Principles for the Sustainable Management of the Historic Environment in Wales* - sets out six principles for conservation, including that historic assets will be managed to sustain their values and that understanding the significance of assets is vital.
- *Heritage Impact Assessment in Wales* – emphasises principles for creating a Heritage Impact Statement, in particular the need for 'sufficient information to enable both the significance of the asset and the impact of change to be understood'.
- *Setting of Historic Assets in Wales* - explains what setting is, how it contributes to the significance of a historic asset and why it is important.

PPW states that the planning system must take into account the Welsh Government's objectives to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations (para 6.1.5). Therefore, any decisions made through the planning system must fully consider the impact on the historic environment and on the significance and heritage values of individual historic assets and their contribution to the character of place (para 6.1.9)

TAN 24: The Historic Environment, elaborates by explaining that there is a presumption against proposals which will have a significant impact on the setting of remains.

The relevant Policies in the NPT LDP are: -

- Policy SP21 Built Environment and Historic Heritage;
- Policy BE 1: Design;

Additionally, heritage issues are addressed by the Council's approved *Historic Environment* SPG (adopted April 2019).

The proposed development's heritage impact has been considered within the Chapter 8: Cultural Heritage of the Environmental Statement and its appendices; which include a Historic Environment Baseline Assessment, Written Scheme of Investigation submitted to Clwyd-Powys Archaeological Trust and Glamorgan Gwent Archaeological Trust, and a pre-application enquiry submitted to CADW, along with subsequent responses.

#### *Affected Historic Assets*

Section 8 of the ES identifies 113 heritage assets (listed buildings, scheduled monuments and a historic park and garden) within the inner and outer study areas, of which there is one SM and 35 non-designated heritage assets located within the site boundary (NPT & PCC). Also located particularly close to the site is the Bryn Llechwen ring cairn (BR327), a funerary monument probably of Bronze Age date. Additionally, eight historic landscape areas were identified within or in proximity to the site.

Of the above, the asset of most significance in itself and due to the potential impacts, is '*The Tramroad at Ystradgynlais (Claypon's Extension) (CH001)*' which is a nationally important earthwork dating to the 1830s designated as a Scheduled Monument (SM). Potential impacts are on the SM and its setting. The Tramroad is 6.44km in length and runs from Ystradgynlais across Mynydd y Drum through the application site towards where the Onllwyn Washery is today. The extent of the SM in the location of the site is shown on figure 6 below (being located on the joint boundary of NPT and PCC), which also shows designated heritage assets (extracted from the ES Fig 8.1).

The tramroad was built using a hybrid of horse-drawn and steam-driven technology, making it a historically significant feat of engineering, and formed part of the Brecon Forest Tramroad which was a vitally important route for the movement of raw materials for the flourishing iron trade in the area.

The ES acknowledges that it is a heritage asset of high value whose National importance is derived from its potential to enhance and illustrate our knowledge and understanding of the raw materials transportation network from nineteenth century iron industries.

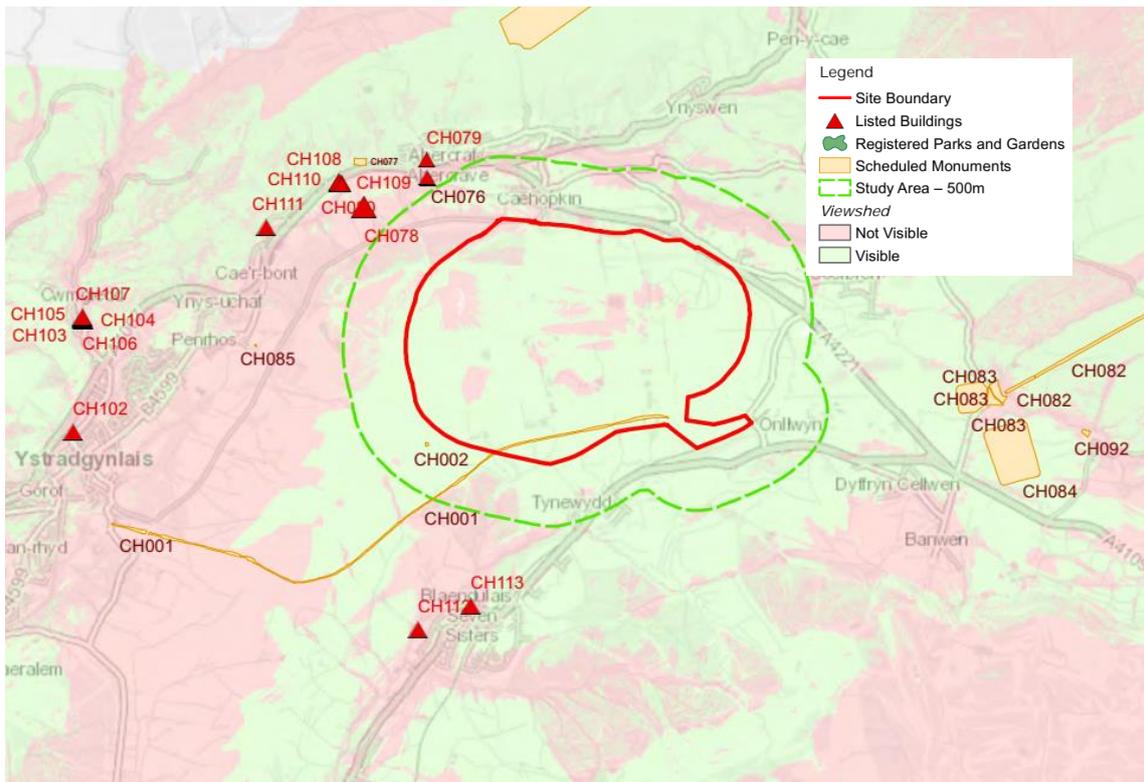


Figure 6: Designated Heritage Assets

### *Potential Effects on Historic Assets*

Section 8 of the ES identifies those aspects of the Project which may have an effect on cultural heritage assets including:

- Ground preparation work, including the removal of topsoil prior to the building up of embankments;
- The excavation of cuttings;
- The excavation of trenches for drainage works;
- The alteration of the setting of heritage assets.

### *Impact on Tramroad / Scheduled Monument*

Given that the extent of site within NPT is limited, the primary heritage impact for this report to address concerns the impact on the scheduled tramroad (and its setting), with the alignment of the proposed earthworks intersecting the Tramroad SM at limited intervals along the southern extent of the application site.

The proposed earthworks would cross the Scheduled Monument near its eastern end, permanently burying 450m section of it, with three drainage pipes also required to be installed across the Scheduled Monument where the embankment crosses it. Trenches, circa 2.1m in width and 15m in length would also be cut into the surface of the Scheduled Monument prior to its burial. It is noted, however, that the exact details will be subject to Scheduled Monument Consent.

The extent of the works are identified on figures 7 and 8 below.

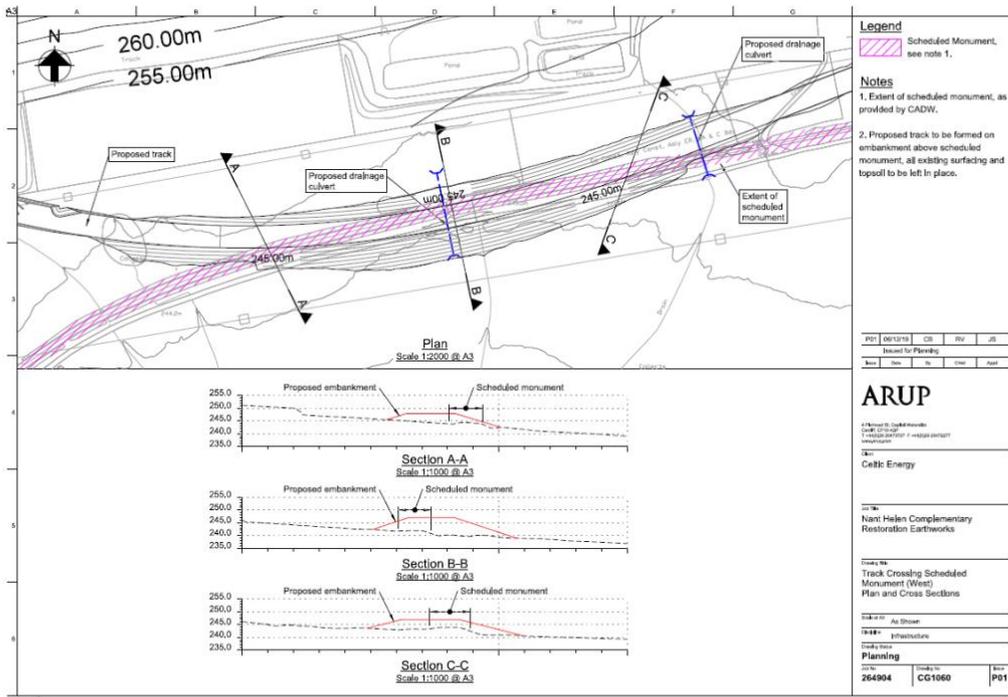


Figure 7 :

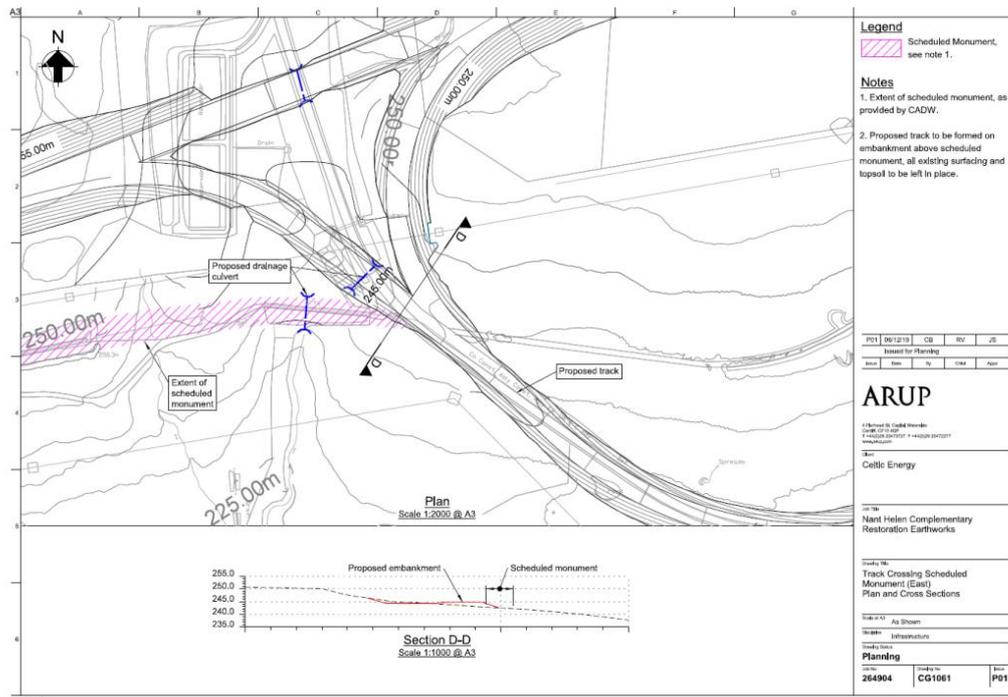


Figure 8 :

Although the 450m stretch would equate to only 7% of the monument's entire 6.44km length, the cutting of the trenches and the burial under the embankment would interfere with the existing linear nature of the feature and lead to a loss of legibility as well as the removal of part of its physical fabric. Given the archaeological and historical values of this monument, the ES identifies that this would constitute a permanent **major adverse** significance of effect.

In order to mitigate this, no topsoil would be removed during the construction of the embankment and any benches required to provide the necessary gradient would be cut outside of the scheduled area. Although the Scheduled Monument would remain largely intact beneath the new embankment, there would be an interruption in its legibility, with the east and western sections of it divided. This would have an adverse effect on how the monument can be understood.

It is noted that the applicant's agent has liaised with Cadw throughout the pre-application stages and as part of the statutory Pre-Application Consultation (PAC) to identify the impacts and understand their views. In this respect, Cadw have consistently emphasised that the conservation of archaeological remains and their settings is a material consideration in determining a planning application, whether those remains are a scheduled monument or not. Where nationally important archaeological remains are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in **exceptional circumstances** that planning permission will be granted if development would result in a direct adverse impact on a scheduled monument (or an archaeological site shown to be of national importance). (Paragraph 6.1.24 of Planning Policy Wales (Edition 10)).

Moreover [Technical Advice Note 24: The Historic Environment](#) further states that there is a primary presumption against proposals which would involve significant alteration or cause damage, or would have a significant adverse impact causing harm within the setting of the remains.

To that extent, the socio-economic section below summarises some clearly defined positive impacts associated with a potential rail proposal and a leisure/recreation/tourism end use for the site in terms of employment and economic regeneration transformative impacts which the applicant considers indicate that exceptional circumstances arise in this case.

Cadw's formal response on this application has reiterated such earlier advice, noting that the ES explains that there will be a **direct and permanent, major adverse impact on the scheduled Tramroad at Ystradgynlais (GM399)**. Accordingly they further state that *"this adverse impact will be significant and is contrary to national planning policy contained in section 6.1.24 of Planning Policy Wales 2018. Therefore, your authority will need to weigh this direct significantly adverse impact against the economic and other benefits"*.

In this respect they note that [Planning Policy Wales](#) explains that it is important that the planning system looks to protect, conserve and enhance the significance of historic assets. This will include consideration of the setting of an historic asset which might extend beyond its curtilage. Any change that impacts on an historic asset or its setting should be managed in a sensitive and sustainable way.

Having regard to the above it is of note that, irrespective of any planning permission that may be forthcoming for this development, the works identified above to the Scheduled Monument cannot lawfully be undertaken until such time as Scheduled Monument Consent (SMC) is granted by the Welsh Ministers.

During the PAC process Cadw stated that they had “*significant concerns about the permanent major adverse and significant impact on the Scheduled Monument of the tramroad at Ystradynlais unless the scheme is redesigned*”, considering the proposals to be contrary to TAN 24 and PPW. Cadw thus “recommended that the scheme is redesigned” and the application for a Scheduled Monument Consent (SMC) be “made before submitting the planning application to ensure the setting is acceptable”.

In light of the above concerns the agent continues to liaise with Cadw and is currently preparing the application for SMC to allow Cadw to fully consider this matter.

The ES has identified that physical constraints on the site, together with fundamental design parameters associated with the potential rail test track proposal, have dictated the proposed earthworks design and ultimately made it impossible to implement the rail proposal (should it be granted) and avoid the monument in its entirety. In the leisure/tourism development scenario, however there is more scope to design facilities such that the monument is left undisturbed.

Cadw’s formal response on the current application has thus now stated that each Authority “will need to weigh this direct significantly adverse impact against the economic and other benefits. It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission”.

For the purpose of this assessment, however, it is considered that the identified major adverse effects for this application would only be outweighed in the event that Cadw is satisfied with the justification for such works (through the SMC process). In this respect, it is considered that the extent of works and leisure afteruse proposed by the current application would not constitute the necessary exceptional circumstances to outweigh the harm to the heritage asset, and thus development (in the scheduled area) would be contrary to PPW and TAN24.

Nevertheless, the earthworks proposed under this application also form part of potential enabling works to facilitate industrial uses including the Welsh Government’s proposed rail testing, research and development and storage facility, called the Global Centre of Rail Excellence (GCRE). The Pre-Application Consultation (PAC) for that project is due in August / September 2020, and an application to both LPAs is due to be made shortly after closing of the PAC period.

Such an industrial proposal *could potentially* provide the additional justification for the works to the Scheduled Monument necessary to amount to exceptional circumstances - albeit it is emphasised that this does not form part of this application and would require careful and detailed assessment at application stage. As detailed elsewhere in this report, facilitating the approval of the required earthworks at this stage would provide such a rail project with the greatest opportunity for success through enabling advanced earthworks to be undertaken. Refusing the application on the basis of impact on the scheduled area would therefore potentially fatally undermine the *potential* to deliver such a project in future, with its likely substantial economic and other benefits.

In this respect, while the extent of works close to the SM would have no unacceptable impact on its setting, in the absence of such exceptional justification (which can only be considered under the later application), or SMC being issued, it is concluded that works should not be allowed within the scheduled area of the SM.

This, however, is considered to be easy to address through the imposition of a *Grampian* condition that will prevent any works that will impact upon the scheduled area until such time as SMC has been granted. This means that Cadw will retain control over the works to the scheduled area, but will also allow for permission to be granted at this stage and for works to continue on the earthworks under this application outside of the scheduled area, and for such works within the scheduled area to then be implemented swiftly following any issue of SMC (should it be forthcoming).

Such a condition will also afford the applicants the opportunity, should SMC not be forthcoming, to apply under that condition for amendments to the landform in that area (including drainage, landscaping etc.), thus allowing further assessment and public scrutiny of impacts of the changed landscape but without the need for a formal application (under s73).

Archaeological monitoring would also be required during construction to ensure that no physical damage is done to the Scheduled Monument during construction.

In terms of its historic landscape setting, LANDMAP shows that almost all of the site is within the Onllwyn Historic Landscape Area – which includes both modern and historic extraction. It has been evaluated as of low value. In terms of its archaeological setting the area is known to have had small to medium scale extraction in the post-medieval and modern periods. There is no evidence that any features of importance have survived at ground level.

#### *Settings of other Scheduled Monuments*

Six other Scheduled Monuments, all prehistoric in date, have been identified as having the site within their settings. The closest of these, the Bryn Llechwen ring cairn, is located c130m west of the site (in PCC) and there is the potential for an adverse effect arising from the change to the cairn's setting as it would have clear views across the entire site.

The ES identifies that there would be no permanent effects on the cairn arising from the creation of the Project, however during construction and until the embankments have grassed over, there would be a temporary adverse effect resulting from the increased noise, lighting and appearance of construction activities happening only a short distance from the cairn. Overall there would be a minor magnitude of impact, resulting in a temporary **minor adverse** significance of effect. This is not significant.

Cadw has confirmed that they have no concerns about the impact on the Bryn Lechwen Ring Cairn (BR327) as a temporary impact on setting will cease once development is completed.

### *Impact on Listed Buildings*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Authorities considering applications for planning permission which affect a listed building to have *special regard* to certain matters, including the desirability of preserving the setting of the building.

The ES identified 18 heritage assets as requiring further assessment in relation to impacts arising from changes to their setting (section A4.1.32 of Appendix 8A heritage Desk based Assessment) 10 of which are scheduled monuments (and as such an assessment of the setting has been made by Cadw), the remaining 8 are listed buildings of which 7 are within Powys County Council and one within NPT.

The ES has made an assessment on the setting of these assets, which is accepted and on which basis, and having special regard to the s66 matters, it is concluded that the setting of the identified listed buildings would not be harmed by the proposal.

### *Other Matters*

In addition to the known heritage assets within the site there is the potential for previously unrecorded archaeological remains to be removed during construction. While the archaeological potential for much of the site is negligible, due to past open cast mining, two areas in the north and south of the site (Areas B and C, Figure 8.4) were identified with greater potential. In both cases, 19th and 20th century mining activities were identified, which make the potential for archaeological remains pre-dating the post-medieval period unlikely. However, there is a high potential for archaeological remains of late post-medieval and modern date within these areas.

The full details of any archaeological mitigation should be agreed with the archaeological advisors of GGAT (and CPAT in Powys) and be undertaken under an agreed Written Scheme of Investigation approved by CPAT and GGAT and carried out by an appropriately qualified archaeological contractor.

### *Impact on Non-Designated Heritage Assets*

While there are other archaeological remains (non-designated assets) within the site (see figure 9 below) notably for NPT the majority are outside of the current site boundary. Moreover, the ES identifies that there would only be a minor adverse significance of effect. GGAT raise no objections to such impacts subject to the conditions detailed above.

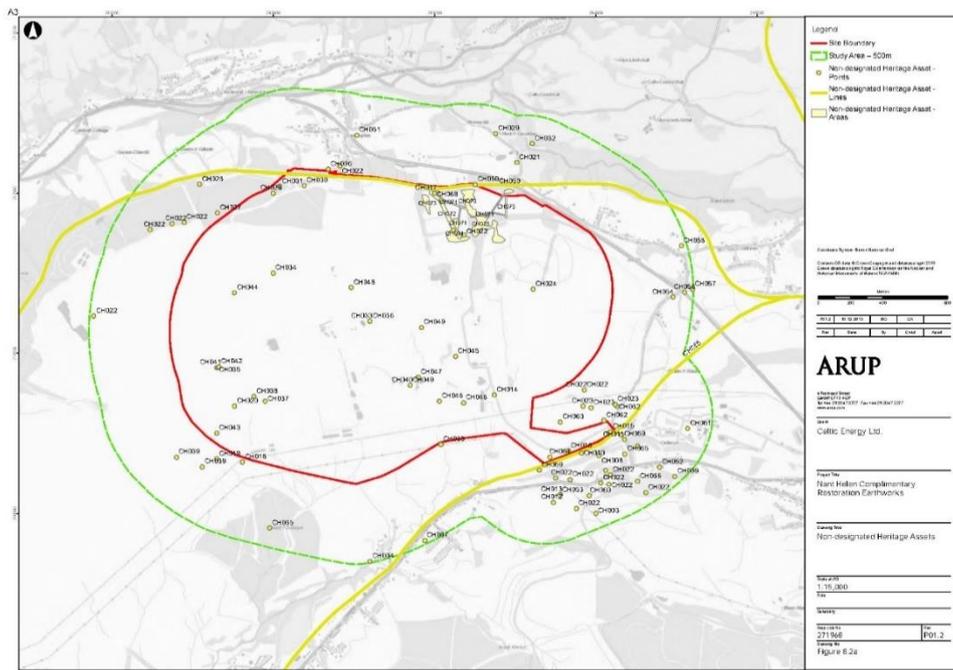


Figure 9 : Non-Designated Heritage Assets

### Heritage - Conclusion

The above assessment emphasises that the degree of impacts arising from the development on designated and non-designated heritage assets would not be significant in the majority of circumstances. The exception to this is the impact on the scheduled tramroad, which is considered to be permanent and significant adverse. Moreover, the benefits of this development, while not insignificant in themselves and as part of the potential industrial after use, would at this time not amount to the *exceptional circumstances* necessary to justify the permanent works required to create the land platform in the scheduled area.

Nevertheless, with the exception of the actual works affecting the tramroad, the development would not have any unacceptable adverse impacts, and having regard to the benefits of granting permission for the earthworks as a flexible landform for future use, and for the potential rail centre delivery timescales, this assessment recommends that planning permission is granted subject to a specific Grampian condition which precludes any works within the scheduled area (together with an option to submit alternative details of the amended landform in and around this area should SMC not be granted) alongside other archaeological conditions to protect the archaeological resource.

### Parking and Access Requirements and Impact on Highway Safety

Welsh Government Transport initially directed that a condition be imposed requiring a Construction Traffic Management Plan (TMP) to be submitted to and approved by the Local Planning Authority on the basis that 300-600 vehicle movements were proposed per day. The applicant has subsequently clarified that these movements are internal site movements and the proposals will not generate any significant additional traffic on the highway.

As a consequence, WG have confirmed that the direction to impose the condition is therefore removed, a stance which the Council's highway Officer agrees with.

The existing access road (in Powys) will be retained and any change to the number of vehicle movements is considered to be minimal as the activity will be carried out in combination with the proposed restoration works, without any significant change in the number of items of plant or plant operatives.

Accordingly there are no highway objections to the proposed development.

#### Impact on Public Access and Common Land

The proposed development's impact on public access has been assessed within Chapter 4: Public Rights of Way (PRoW) and Common Land of the Environmental Statement. Impact has been assessed in the context of the PRoW that cross the site and the extent of common land associated with Mynydd-y-Drum that falls within the site's boundary.

In Planning Policy Wales, PRoW and other publicly accessible recreational areas that are natural or semi natural in character, such as Common Land, are treated as forms of green infrastructure, collectively with other features of a similar nature including wildlife corridors.

PPW also specifically identifies Common land as a finite resource that should not be developed unnecessarily. Access to it should not be prevented or impeded unnecessarily to ensure its proper management (para 6.3.17). It should be noted that, in addition to planning permission, certain works which prevent or impede access to or over common land or involve new resurfacing require consent from Welsh Ministers.

National Planning policy requires that green infrastructure is treated as being important in facilitating opportunities for people to improve their health and wellbeing. The planning system should protect and enhance green infrastructure assets and networks on this basis. The PRoW and common land are predominantly located within Powys but extend into Neath Port Talbot, albeit beyond the limits of the site. Notwithstanding that, the contiguity of features and uninterrupted cross boundary usage by the public will be important to preserve.

Many of the PRoW were suspended or diverted to facilitate the operation of Nant Helen Surface Mine. The Environmental Statement includes the suspension order and mapping which was applied for by Celtic Energy under Section 15 of the Opencast Coal Act 1958 to suspend some routes and to provide alternative routes. These have been in place since 1997. Access to the Common Land has also been extended by legal agreements in place between the Commoners and the applicant.

Both PRoW and common land suspension conditions are expected to persist during construction of the proposed development and potential for further adverse effects are therefore limited during this time. Post completion, the baseline used for assessment is that created by the restored state of Nant Helen Surface Mine, reinstating both access to common land, and PRoW in accordance with the definitive map.

The proposed earthworks would in the applicants' view complement the restoration scheme, allowing for the reinstatement of PRow and common land access to re-establish the function of the site as an area of public use for recreation, alongside commoner use for agriculture.

Some of the PRow will not be reinstated along their historical alignment and modest diversions will be required to facilitate the earthworks. It is not considered that these diversions will undermine the holistic function of the PRow network or impinge on public rights of access, whether within or across the site, or where PRow may form contiguous links beyond. . A statutory process for the diversion of the definitive routes will however have to be followed. Notwithstanding statutory processes required, it is not considered there is any conflict with policies within the Local Development Plan.

Specifically in respect of rights of way within the NPT boundary, the Rights of Way Officer has advised that there is a bridleway (BR26 Dulais Higher) that travels along the old tramway (scheduled monument) which is also registered on the Powys Definitive Map (being on 2 Definitive maps is very unusual). There is also a footpath within the site boundary (FP15 Dulais Higher). Both of these are shown on the plan extract below.

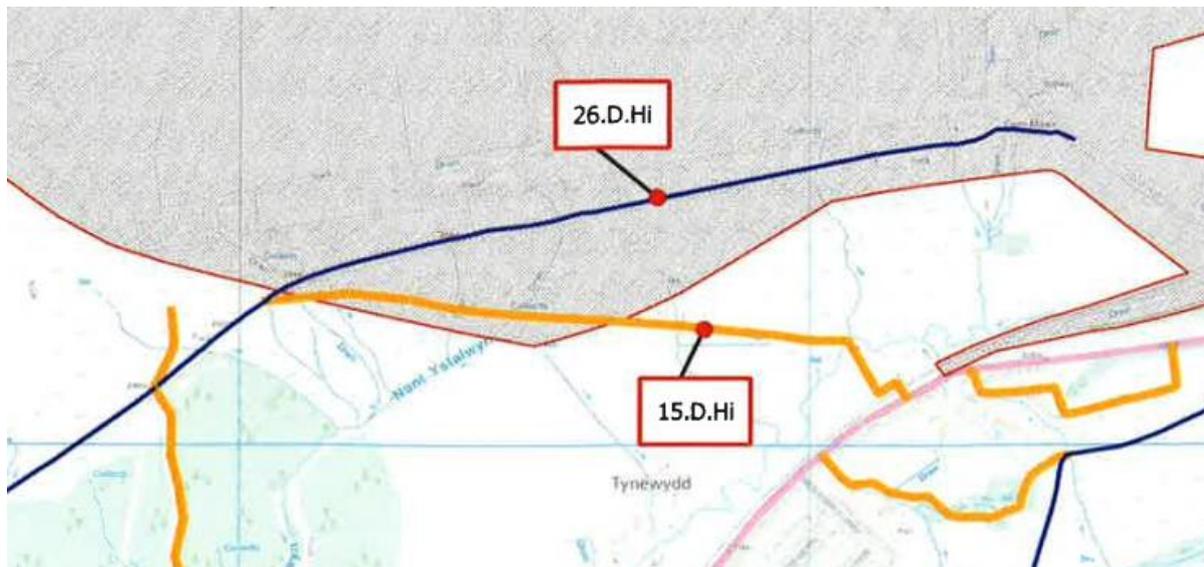


Figure 10: Rights of Way in NPT

In Powys a number of public rights of way cross the site and will be affected by the proposed earthworks, being footpaths 40, 19, 90, 49, 7, 11 and 17 and bridleway 45. Most of these paths are currently suspended via an Order under the Opencast Coal Order. During construction, an additional temporary closure of parts of bridleway 45 and footpath 19 will be required to ensure public safety.

The public rights of way that are suspended under the Opencast Coal Order are to be reinstated as part of the revised restoration scheme for the Nant Helen opencast coal site. As the applicant has identified, the earthworks will impact on the reinstated routes of the paths, due to the gradient of the slopes of the earthwork. Legal diversions will be required to allow for the earthworks to be constructed. Such legal diversions can include any proposal relating to NPTs PRow network as above.

In terms of timescales, it is of note that planning permission does not, in itself, grant permission for the diversion of a public right of way; a separate legal process must be followed which requires the making and confirmation of a public path Order. As noted in the Environmental Statement, the options for diverting these paths are under consideration and will be subject of a public consultation exercise. The proposed earthwork must not be constructed over the existing lines of the paths, until such time as the legal diversion process is complete as it is an offence to develop over the line of a public right of way.

In addition, the proposed earthworks will affect registered commons BCL78 (Mynydd-y-Drum) and BCL136 (Land near Abercrave Station.) There are grazing rights recorded in the Register of Common Land as being exercisable over BCL78 (Mynydd-y-Drum) common; no grazing rights are registered over BCL136 (Land near Abercrave Station). Both commons benefit from a right of access on foot for recreation, under the Countryside and Rights of Way Act 2000, although the Nant Helen opencast coal site area is excepted from that right of access.

Common land does benefit from a high degree of legal protection. Under section 38 of the Commons Act 2006, it is unlawful for 'restricted works' to take place on common land without prior consent. Construction of the earthworks and associated drainage is likely to constitute restricted works: a separate legal process will need to be undertaken to seek common land consent for these works.

### Biodiversity / Ecology

The proposed development's impact on biodiversity has been assessed within Chapter 7: Biodiversity of the Environmental Statement and its appendices which include an extensive collection of habitat and species surveys, reports and figures.

The Chapter documents survey work undertaken in relation to habitats and species in addition to reporting the value of receptors and assessing the effects arising from the site construction (and associated enabling works such as vegetation clearance), and the operation of the proposed development. The chapter also documents measures to mitigate and compensate these effects. Enhancement measures, which go beyond mitigating effects, are also identified. The residual effects following the inclusion of these measures are then assessed.

Impact has been assessed in the context of designated sites, the habitats present within the application site, the biodiversity that it supports currently (to inform impacts during construction) and would subsequently support after Nant Helen Surface Mine has ceased operations and the land has been restored.

'Notable' species and habitats considered include species and habitats of principal importance for the purpose of maintaining and enhancing biodiversity in relation to the requirements of Section 7 of the Environment (Wales) Act 2016. This is in addition to any species considered to be of significance for nature conservation such as species listed in red data books, the Royal Society for the Protection of Birds (RSPB) 'Birds of Conservation Concern' lists and or Local Biodiversity Action Plans (LBAPs).

Policy on biodiversity is based on a range of European directives transposed into UK legislation that make provision for designated European sites (SSSI, SACs, SPAs and Ramsar) and regulations for controlling the effects of development. It is also based on a range of national legislation not necessarily borne out of European directives, but domestic drivers.

Planning Policy Wales bases its policy position on the Environment (Wales) Act 2016, which was introduced to maintain and where possible enhance biodiversity and the resilience of ecosystems (Section 6 Duty). PPW sets out that planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means that development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity.

Subsequent guidance issued by Welsh Government has clarified that in light of the PPW and the Environment (Wales) Act 2016, where biodiversity enhancement is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise it will be necessary to refuse permission.

Within the LDP, Policies SP15, EN6 and EN7 seek to protect, conserve, enhance and manage biodiversity and geodiversity and, where harm is unavoidable, to ensure effective mitigation measures are required to ensure there is no reduction in the overall value of the area or feature; and to protect important natural features.

*Protected Sites - Special Areas of Conservation (SAC) / Sites of Special Scientific Interest (SSSI)*

The site is an active surface coal mine and there are no designated sites within its boundary. There are several designated sites beyond, Coedydd Nedd a Mellte SAC is 4.3km from the site and Cwm Cadlan SAC is 9.5km from the site. The potential effects on these sites arising from the proposed development, whether during construction or after completion, are negligible due to the lack of source-pathway-receptor linkages. NRW and both Council Ecologists agree with the conclusion that there would be no likely significant effect to the SACs and their associated features either alone or in combination with other plans or projects and that no further assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) would be required.

The same is true for all bar one of the SSSI within 5km of the site. The Nant Llech SSSI is the only one that is hydrologically connected to the site and as such there is potential for the site to be affected by pollution events and surface water run-off containing high sediment loads. In light of the nature of the proposed development the ES concludes that any adverse effects would be temporary, and reversible. Pollution control measures have been identified within the ES and Appendix 3B – Outline Construction Environmental Management Plan, the outline measures identified are considered acceptable and appropriate to minimise the risk of impacts from the proposed development. It is noted that NRW have identified in their response that subject to the outlined pollution prevention measures being implemented the proposed development would not be likely to damage the features for which the Nant Llech SSSI is designated and have recommended that a pre-commencement condition requiring the submission

of a detailed Construction Environmental Management Plan is included should the Authority be minded to approve the application. The Council Ecologists agree with this recommendation and consider that this requirement is necessary in order to ensure the development complies with the requirements of LDP Policies SP16, EN6 and EN8.

### *Locally-Designated SINC*s

There are 5 SINC

s within 2km of the site but there is significant spatial and physical separation between the site from these SINCs, and as such no effects (either direct or indirect) are considered likely. The Council Ecologists are satisfied that this conclusion is appropriate.

### *Ancient Woodland*

There are a number of areas of ancient woodland, within 1 km of the site and there is one area of recorded PAWS ancient woodland within the (Powys) site boundary. However, the submitted evidence would suggest that the area of conifer plantation to be lost as a result of the project is not PAWS as it was worked in the 1970s as part of the Abercrave/Gwaunton surface mine and therefore any ground flora, soils and seed beds have been destroyed. The woodland has been demonstrated to be on backfilled material/overburden and not, in-situ woodland soils. The Council Ecologists have reviewed the evidence and assessment provided with regards to the area identified as PAWS Ancient Woodland habitat on the Ancient Woodland Inventory and are satisfied that the habitat present does not actually meet the requirements which would qualify it as ancient woodland habitat and therefore would not require the level of protection afforded to habitats of this type under National and Local Planning Policies and is instead dealt with in terms of general woodland habitat loss.

### *Habitats*

Past habitat surveys associated with the consenting of the current operations at the site indicated the presence of plantation woodland, broadleaved woodland, hedgerows, scrub, acid marshy/grassland, mire, ephemeral/short perennial, watercourses and standing water. Recent habitat surveys indicated little change besides fluctuating water levels within water bodies and the extension of mining operations.

Earthworks will result in habitat loss, where cuttings and embankments are constructed. In addition, temporary works such as construction compounds and access may require habitat loss. Habitat loss will directly affect notable habitats, protected and notable species known to occur within, and adjacent to, the site. Indirect effects to species may also occur such as reduced breeding and foraging success, as a result of reduced habitat availability, and which may lead to extinction where populations are small and or isolated. Habitat loss is not anticipated to directly or indirectly affect any protected sites in the wider area.

The revised restoration scheme (Figure 1.2) includes the creation of new habitats within parts of the site including acid grassland, enclosed pasture and broadleaved woodland. As such, these areas of the site will be re-established as acid grassland (once the restoration scheme commences). The restoration scheme (Figure 1.2) also details the retention of existing habitats namely acid grassland and waterbodies (as shown on the

restoration plan), as well as purple moor grassland and heathland (shown on the Phase 1 plan) within the site boundary. These habitats will be lost during construction.

Thirty-eight habitat types were identified within the site boundary. Habitats lost within the site boundary during construction would total 72.03ha in area. The proposed earthworks would interface with the approved mine restoration scheme in such a way that would lead to a loss of an additional 12.21ha of habitat that would have otherwise been retained. Severance and fragmentation of habitat would cause indirect effects over an area of 3.35ha leading to a total habitat loss of 87.59ha.

Through mitigation, any adverse residual impacts from the construction of the proposed development can be minimised and bring about enhancements compared to the existing site context. Proposals to restore land after coaling operations have ceased will provide a mosaic of habitats and waterbodies that in and of themselves enhance biodiversity. To mitigate the proposed earthworks interface with this, and to ensure the cumulative effect maintains this enhancement, a series of pre-site clearance and construction measures are proposed.

A habitat creation and restoration plan illustrates a series of notable habitats to be created include fen-mire, heathland, waterbodies and broadleaved woodland, in areas currently of less nature conservation value or which will be disturbed during the works. The design facilitates the creation of a habitat mosaic using a varied landform. This includes the creation of shallow scrapes of varying sizes within the small enclosed area in the south east of the site, and immediately north of this, which will facilitate the establishment of wetlands and aquatic emergent vegetation, and likely shallow peat (over time). The re-profiled overburden mound within the larger enclosed area, will facilitate the establishment of heathland on its slopes and marshy grassland on its plateau. To compensate for likely impacts on the fen-mire habitat (and mosaic of open water and wet heath), because of hydrology changes from the project, it is proposed that a similar habitat complex could be created within the site and secured by planning condition. Tree planting of native broadleaved tree species is proposed in the north western corner of the site (in an area of existing conifer), in an area designated as plantation on ancient woodland, therefore improving the nature conservation value of this woodland and providing connectivity to new planting proposed as part of the approved restoration plan. In combination, measures to create and enhance habitat will benefit an area of approximately 226ha.

The Council Ecologists note that the ES identifies that the long term maintenance and monitoring of newly established habitat and other habitats which will be retained and protected will be detailed within an Ecological Management and Monitoring Plan (EMMP), and the proposals with regards to creation and enhancement of habitats to address the identified habitat loss as a result of the proposed development are considered to be appropriate and acceptable. In addition the principles outlined with regards to the EMMP are considered to be acceptable and it is therefore recommended that a condition to secure the submission of a detailed Ecological Management and Monitoring Plan building on the principles outlined in Section 7.20 of the ES for approval by the LPA is included to ensure compliance with LDP Policies EN6 and EN7 which it is recommended that the condition states that the EMMP covers a period of 25 years.

### *Impact on Protected Species*

The ES has incorporated an assessment and associated species survey reports including Bats, riparian mammals, dormouse and amphibians, along with an evaluation of impacts on important ecological receptors. Details of the identified impacts and proposed mitigation have been summarised in Table 7.14 (Appendix 7O of the ES).

The Council Ecologists have advised that the assessment and identified mitigation are considered to be appropriate with regards to the impacts identified for each species considered. Section 7.20 of the ES identifies the production of detailed CEMP, Ecological Management and Monitoring Plan (EMMP) and Ecological Protection Plan (EPP) and outlines measures which would be implemented to deliver the identified mitigation measures. The outline measures include pre-commencement surveys for breeding birds, bats, otter, badger and reptiles, implementation of a reptile trapping and translocation programme, identification of species translocation protocols, Ecological Clerk of Works supervision, protection of retained habitats.

Based on the survey results and the mitigation measures proposed, NRW has also confirmed that they are satisfied that the proposal is unlikely to affect European Protected Species (EPS), however the potential for species such as bats and otters to be present could not be fully discounted. Noting that due to the nature and scale of the proposal works will be carried out at different phases, they agree with the recommendations made in section 7.20 of the ES that pre-construction surveys for bats and otter will be required to establish whether these species are going to be affected. Pre-construction surveys will form part of the CEMP.

The Council Ecologists have similarly concluded that subject to the implementation of the identified mitigation and enhancement measures within a EMMP, CEMP and EPP, the proposals would comply with national and LDP Policies. However it is essential that submission of detailed versions of these documents are secured through appropriately worded pre-commencement planning conditions including appropriate details of mitigation, monitoring and remediation protocols. Further that the management and monitoring plans will need to be of sufficient duration to ensure establishment of the relevant habitats/features of ecological value and in this respect they recommended that the EMMP covers a period of 25 years.

### *Biosecurity*

NRW has advised that biosecurity is a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern Invasive Non Native Species (INNS) due to Extended Phase 1 Habitat Survey confirming the presence of Japanese knotweed (*Fallopia japonica*), montbretia (*Crococsmia x crocosmiiflora*), wall cotoneaster (*Cotoneaster horizontalis*) and rhododendron (*Rhododendron ponticum*).

While the locations of the INNS identified in the survey are outside of the planning application boundary, there is potential for some of these species to become established in the development site prior to construction commencing. Therefore, it is necessary to consider the potential effects and prepare accordingly.

They further note that while the PAC report stated that an INNS Management Plan will be produced as part of the CEMP, the outline CEMP (Arup, April 2020) is not included. Accordingly they state that the INNS Management Plan should be integrated within the CEMP and its submission and implementation secured via Condition.

### *Biodiversity Conclusion*

Having regard to the above assessment, it is concluded that the impacts of the development both during and post construction and ongoing future management and monitoring can address the impacts on biodiversity to an acceptable degree. Accordingly, it is concluded that subject to the submission of a CEMP, EMO and EPP and associated supportive documents to ensure necessary management measures are agreed prior to commencement of development, or phase of development and implemented for the protection of the environment during construction, the proposed development would broadly accord with the policy objectives of PPW and with LDP Policies SP16, EN6 and EN7.

### Ground Water / Hydrological Impact (sustainable drainage, water quality and flood risk)

The proposed development's impact on the water environment has been assessed within Chapter 5: Water Environment of the submitted Environmental Statement. For the purposes of the ES, the water environment has been considered to comprise the following elements within the study area:

- The water quality and hydromorphology of surface waters;
- Groundwater quality, level and flow;
- Terrestrial ecosystems that are dependent on groundwater; and
- Flood risk to and resulting from the project.

As for the geotechnical section above, significant public concern has been expressed (by Powys residents) about the impact of inadequate drainage on the stability of the proposed northern embankment as well as the exacerbation of surface water flooding currently being experienced in areas to the north of the site, especially Caehopkin.

Concern has also been expressed about the potential impact from the two water features to be created by the Nant Helen Opencast Mine Restoration Scheme. However, these features have already been approved as part of the mine restoration scheme and fall outside of the application site (and NPT boundary).

Planning Policy Wales generally requires the location of development to account for the sustainable management of natural resources, ensuring resilience in the context of environmental risks, such as those posed by flooding, water quality and water ecosystems, mitigating any negative effects accordingly.

It also states that planning authorities should be aware of the risk of surface water flooding, usually caused by heavy rainfall, and ensure developments are designed and planned to minimise potential impacts. Development should not cause additional run-off, which can be achieved by controlling surface water as near to the source as possible by the use of SuDS (para 6.6.27). The Drainage Officer has confirmed that SuDS will

be required in this case and that pre-application discussions in respect of the required application are ongoing.

The site is located almost entirely in the headwaters of the Afon Tawe and Afon Dulais catchments, with a very small area to the east of the site draining to the Afon Pyrddin catchment. The larger part of the site drains towards the Afon Tawe to the north, with the southern part of the site draining to the Afon Dulais to the south.

The northern half of the site sitting within the Tawe catchment contains several small unnamed streams which drain in a northerly direction towards the River Tawe. The River Tawe is the largest watercourse within the vicinity of the site and flows roughly from east to west approximately 500m to the north of the site boundary.

The southern half of the site sits within the Dulais catchment. The River Dulais flows roughly from east northeast to west southwest. The Dulais is fed by several tributaries most of which are unnamed. One of the tributaries, the Nant Ystalwyn, originates in the southwestern corner of the site and flows in a south-westerly direction towards its convergence with the Dulais. A collection of other unnamed tributary streams, which originate within the southern and central portions of the site, flow in a southerly direction to their respective convergences with the River Dulais.

The drainage from the existing Nant Helen Mine site is managed via a series of lagoons and settlement ponds prior to discharge into surrounding watercourses. These discharges are controlled by NRW under an Environmental Permit. However, during restoration the position will change and the ES concludes that there is little to be gained in using the current situation as a baseline.

The baseline for the assessment is created by the approved restored land profile and features associated with Nant Helen Surface Mine, comprising:

- Six watercourses restored from before coaling operations began;
- Introduction of two new wetlands;
- Introduction of attenuation ponds that will discharge to watercourses at greenfield run off rates or below greenfield run off rates;
- Removal of ponds associated with mine workings; and
- Removal of drainage ditches associated with mine workings.

Having established the baseline position the ES considers the following additional elements of the proposed development that have the potential to impact the water environment include:

- culverts to tributaries of the River Tawe and River Dulais and drainage ditches;
- cascading features associated with the culverts;
- diversions to drainage ditches on site; and
- removal or relocation of ponds.

The impact of these features has been assessed in the context of surface water quality, ground water quality and flood risk. These are assessed following the source – pathway – receptor approach, a recognised best practice methodology.

### *Surface Water Quality*

The most likely sources of surface water impacts are:

- a. Disturbance of silt/soil generating surface runoff with high sediment concentrations (mobilised suspended solids);
- b. Accidental spillage of fuels, oils and chemicals (e.g. concrete, plant fuels/oils, lubricants, hydraulic fluids and floating solids such as litter) resulting in pollution of watercourses and potential impacts on fish; and
- c. Dewatering discharges containing high levels of suspended solids.

### *Groundwater Quality*

Sources of potential pollutants to groundwater include accidental spills (e.g. fuel from vehicle/plant), silt laden waters from excavation activities or from water contaminated during specific activities, such as concrete pouring/washing. Potential pathways for these pollutants include movement of earth and excavation causing creation of new pathways, direct infiltration at source or in the case of spillages, infiltration from the surface water features during periods of low flow.

### *Flood Risk*

The site is classified as being at low risk of flooding from coastal and fluvial sources. Areas at risk of fluvial flooding are localised to the areas adjacent to the River Tawe, River Nant Llech and River Dulais, outside of the site boundary. Although the earthworks will involve changes to ground levels, it is not considered that this will present a flood risk to the proposed development as the site is not within an area deemed as high flood risk. Surface water run-off has the potential to exacerbate the risk of flooding at the River Tawe, River Nant Llech and River Dulais, however, site run-off will be captured within the attenuation features and discharged at greenfield run-off rates, or to a lower discharge rate as specified for particular catchments as part of the restoration scheme. This will be dealt with via SuDS.

The most likely sources of hydrological impacts relate to the direct physical modifications to surface water features including:

- a) culverts to tributaries of the River Tawe and River Dulais and drainage ditches;
- b) cascading features associated with the culverts;
- c) diversions to drainage ditches on site; and
- d) removal or relocation of ponds and drainage ditches. The modifications are detailed in the Drainage Strategy that has been submitted in support of the planning application.

### *Design Mitigation*

There are several measures built into the proposed development which seek to minimise the impact on the water environment. These measures include:

- Attenuation features installed as part of the drainage design to collect surface water run-off, the features will be restricted to discharge at greenfield run off rate or to a lower discharge rate as specified for the restoration scheme; and
- Maintaining vegetation adjacent to the streams within the redline boundary is necessary to reduce flows and prevent mobilisation of soils.

It is concluded in the ES that by using best practice measures within an industry standard Construction and Environmental Management Plan (CEMP) the significance of effects on water quality and flood risk during construction will be negligible. An outline CEMP is submitted with the application but a condition requiring a fully detailed CEMP to be submitted and approved by the LPA is recommended

After completion, the earthworks are not considered to have an impact on surface water quality, groundwater quality or flood risk. Therefore, any significant impacts are limited to the effect of the earthworks on hydromorphology and how surface water flows over the land.

Introducing culverts, cascading features and diverting ditches will change the drainage solution underpinning the design of the approved Nant Helen Mine restoration. Mitigation will be required within the detailed design of the embankment and these details will be required by condition, and there is no reason to believe at this stage that an adequate and acceptable drainage design cannot be provided. Ongoing maintenance of the system provided will be the responsibility of the landowner.

NRW has confirmed that as surface water drainage from the site will be discharged via a variety of methods into the local water course network and infiltration to natural ground will occur on the rest of the site, they have no objection.

In terms of groundwater and surface water, it is expected that the proposed scheme will have no adverse impact and is anticipated to be beneficial on the basis that the surface water drainage element of the scheme will be designed to reduce the current flooding being experienced at Caehopkin.

### Cumulative Effects

The ES has also considered whether there would be any cumulative effects in respect of other projects under construction or permitted within the scheme area, as consideration needs to be given as to whether in combination these impacts would result in greater impacts than they would, should they occur independently.

The only projects of note were the Nant Helen Restoration works (committed development), and the Global Centre of Rail Excellence (GCRE) (likely development).

The restoration scheme for the site is linked to the planning consent of the open cast coal mine at Nant Helen and is therefore development that is committed. Moreover, as the restoration is committed to take place the baseline for the ES in any event is in most cases the restored site. Consequently, it is accepted that the assessment for the Nant Helen Complementary Restoration Earthworks has already included consideration of the restoration works into the assessment.

In respect of the potential 'Global Centre of Rail Excellence', as identified earlier in this report, the GCRE is a Welsh Government proposed Scheme which would use the Nant Helen Complementary Restoration Earthworks as the basis for the development of a rail testing facility. Should the GCRE project be moved forward, there would likely be environmental effects that would need to be considered cumulatively with those of Nant Helen. However, at this stage, it is accepted that it is not appropriate to avoid making any assumptions within this assessment in regards to cumulative effects.

### Socio-Economic Impact

The socio-economic assessment within the submitted ES provides an overview of the economic impacts which would arise from the proposed development which, it is emphasised, relates at this time only to the creation of a flexible and adaptable landform which integrates with the approved restoration scheme for the surface mine. The current after uses would be agriculture and nature conservation, however, the landform is intended to be flexible and adaptable in order to enabling some form of future development and that aspiration needs to be afforded some weight, especially given that this would accord with the underlying objectives within Planning Policy Wales for sustainable development and creation of healthy, thriving active places with a focus on a positive, sustainable future for our communities. The potential after uses are noted in the description of development and must therefore be considered when looking long-term and in considering the possible socio-economic benefits.

Socio and economic benefits of a proposal underpin both national and local planning policies for sustainable development. The scope of the assessment includes potential impacts and effects arising during construction of the development and its after use.

This section seeks to identify and assess the proposed socio-economic benefits arising from the development, but members should note that the overall 'planning balance' is considered at the end, having regard to the identified impacts of the development throughout this report.

It is of particular note that this proposal is considered an *enabling* development which has the potential benefit of de-risking any proposal for a Global Centre of Rail Excellence (GCRE) that may come forward in the future. It has to be stressed that this proposal does not consider the acceptability or otherwise of a specific GCRE development and in no way seeks to prejudge any planning application that may be made for such a facility in the future. However, it is noted in the description of development as a potential end-use and must be considered when considering the landform proposed, especially since it is clear that the landform has primarily (but not exclusively) been designed with such an end use in mind as a fundamentally important part of the wider economic and business case for such a centre to be located on this site.

The applicants have thus presented within their submissions the positive impacts associated with a GCRE proposal in terms of employment and economic regeneration locally and the potentially transformative impacts across the rail industry for Wales, UK-wide and beyond and set out the wide reaching benefits of Celtic Energy's vision for a leisure/recreational/tourism legacy end use for the site

## *GCRE End Use Benefits*

There are several industry-specific issues that a GCRE rail test and research facility (wherever it is located) will address which principally are:

- Supporting UK train manufacturers and encouraging the establishment of further UK manufacturing facilities and capacity.
- Supporting the development of a UK digital railway industry by providing high quality and safe testing facilities for digital signalling, train control and asset management technologies.
- Delivering high-tonnage endurance testing of railway infrastructure particularly track and structures. Such a facility will enable infrastructure to be rapidly tested and verified and would be unique in Europe, potentially attracting customers from around the world.
- Removing risk from the introduction of new trains and other assets by allowing them to be thoroughly tested prior to introduction. This would avoid the need for new trains, etc to be tested on the national network or rushed into service before all performance risks had been dealt with (note issues with new inter-city trains; certain electrification assets; and projects such as Crossrail).
- Tackling ever-rising costs across the rail sector by allowing new technologies to be effectively tested and commissioned rather than committing them to operations before they are fully developed.

The submissions have emphasised that the UK does not possess anything approaching such a high-quality facility as that planned under the GCRE proposal. It therefore has the potential to not only to solve some fundamental industry issues, but to deliver wide-reaching benefits across a broad spectrum including the local community, the UK (and European) railway industry and the Welsh and UK Governments.

There are essentially six main components to the proposal that form an integrated rail infrastructure project, which in combination, would make this a unique facility in the UK and Europe. Those components in summary are:

- Infrastructure Testing
- Vehicle Rolling Stock Testing
- Maintenance and Refurbishment
- Research and Development
- Decommissioning
- Power and Energy
- Education and Training

Government's recent Rail Sector Deal has identified the potential of the UK rail industry for driving innovation, employment and exports. Government is also aware of the urgent need to improve efficiency, performance and capacity across the UK's railways. The test facilities and associated R&D activities at the proposed GCRE would be instrumental in both establishing UK industry at the leading edge of modern railway technology and enhancing performance, increasing efficiency and removing risk from the introduction of new trains and digital management and control technologies.

Within this broad economic context which has seen the outline business case recently submitted to the UK Government, it is of note that the current application (as opposed to any future application for a GCRE) forms a fundamental part of the advanced planning for such a facility, and of the business case put forward through the Welsh Government to the UK Government for such a facility to be developed in the South Wales valleys, with all its obvious socio-economic benefits. Simply put, approving such earthworks at this time, and allowing these to be undertaken as part of a comprehensive and co-ordinated development alongside the Nant Helen OCCS restoration, places the GCRE project at a significant benefit of delivering the benefits described below. And yet failing to do so would quite probably prejudice the opportunity to do so, given that this application is made by the landowners (Celtic) who are willing to undertake such works as part of their joint venture with WG.

In terms of benefits, the applicant states that making provision for a landform that would facilitate a GCRE facility at this site will potentially assist in delivering great benefits to the local community, with over 100 permanent jobs be created at the facility alone, some of which would be highly qualified positions for research and development and skilled engineering workers. In addition, there would also be direct construction jobs, and in terms of Gross Value Added (GVA) the total 10-year benefits plus construction will deliver between £31m and £70m to the regional economy (2020 prices)."

Potentially, GCRE would thus not only bring high-quality employment to a deprived area, but also help to reduce the productivity gap which exists between the region and the rest of the UK. For example, in 2016 the GVA per head in Powys and Neath Port Talbot was around £17k, compared to the UK average of £27k.

In addition, the facility would boost the importance of South Wales in the national railway industry and create opportunities for local colleges and universities to become more active in railway research and training. For example, Coleg y Cymoedd, with its Centre of Excellence for Railway Training, could benefit greatly from GCRE by giving its students second-to-none practical experience.

GCRE would also generate a consistent flow of inward investment into Wales, contributing to policy goals by the DfT of "enhancing our global competitiveness by making Britain a more attractive place to trade and invest" (Transport Investment Strategy, 2017) and the Welsh Government by "promoting and protecting Wales' place in the world" (Wales National Strategy, 2017).

GCRE would be a unique facility not just in the UK, but in Europe, with European railway organisations accelerating their R&D investments through programmes such as the EU-supported Shift2Rail, the need for testing facilities is increasing, especially for infrastructure, which is currently not available anywhere on the continent. By building (or in this case facilitating / enabling) GCRE now the facility could position itself as a leader in the field of railway infrastructure testing, attracting investment from all over Europe and beyond.

Within the context of R&D investments, it is also noted that the UK Government sees the decarbonisation of transport as critical and the rail industry of significance in achieving a net-zero economy by 2050. To deliver on this objective, the strategy

identifies the importance of taking up new technologies and the requirement for investment in both rail infrastructure and rolling stock. GCRE would provide a testbed for new, green railway technologies, hence helping the UK to becoming net-zero by 2050. This also demonstrates that GCRE is in line with the Well-being for Future Generations Act.

### *Tourism / Leisure End Use Benefits*

On the completion of restoration and following the cessation of coal extraction at Nant Helen and processing at the adjacent Onllwyn Washery, approximately 170 jobs (mostly local) will be lost. In wishing to ensure a long-term and sustainable socio-economic legacy for the site, Celtic Energy has been actively engaging with PCC and NPTCBC on setting out the vision for a regeneration strategy for the site and the wider locality.

In this respect, a rail industry proposal is not the only option put forward under this application, since if the GCRE development does not happen for whatever reason there are alternative uses put forward in the form of Tourism/Leisure End Use Benefits.

The site lies close to several settlements within NPT and Powys and a key foundation of the applicant's vision is the fact that the application site sits adjacent to the National Park and enjoys excellent road access from several entry points into the locality from the strategic road network. There is a clear opportunity here to take advantage of those locational benefits to establish a visitor destination that can help to both complement existing resources, help extend the season, whilst also relieve pressure on more traditional 'honey pot' locations within the national park itself.

The vision for the development also focuses around a leisure and tourism offer that includes visitor accommodation which will both help create employment, retain spend and lengthen the season through a 30-60-bedroom hotel along with self-catering holiday lodges nestled in the landscape.

This accommodation offer is one that could come forward separately but also alongside the GCRE proposal as it would be a complementary use and one that could be master planned accordingly into the site. The in-combination benefits to the economy in terms of serving the rail test facility and activity-based tourism including walking, cycling and horse riding both on the landform being proposed and in the surrounding area are clear and strengthens the business case for the market/investment potential.

There is immense pressure on the National Park with high visitor numbers and this development has a clear role to play in alleviating some of that pressure by developing a destination based around outdoor leisure activities offering a broad package of 'play and stay' cycling, walking and horse riding which in turn deepens the activity tourism focus of the area.

Overall, the potential socio-economic impact is multi-faceted and could be transformational in impact.

## Section 106 Planning Obligations

Local Development Plan Policy SP 4 (Infrastructure) states that “Developments will be expected to make efficient use of existing infrastructure and where required make adequate provision for new infrastructure, ensuring that there are no detrimental effects on the area and community. Where necessary, Planning Obligations will be sought to ensure that the effects of developments are fully addressed in order to make the development acceptable”.

Policy I1 (Infrastructure Requirements) then states that “In addition to infrastructure improvements necessary to make a development acceptable in health, safety and amenity terms, additional works or funding may be required to ensure that, where appropriate, the impact of new development is mitigated.

In this case, and in view of the type and form of development proposed in this location and its potential end uses, it is considered that there is no requirement for any planning obligations to make the development acceptable in planning terms.

## OVERALL ASSESSMENT – ‘THE PLANNING BALANCE’

PPW10 refers to the need to assess the Sustainable Benefits of Development and (at 2.24) emphasises that Planning authorities should ensure that social, economic, environmental and cultural benefits are considered in the decision-making process and assessed in accordance with the five ways of working to ensure a balanced assessment is carried out to implement the Well-being of Future Generations Act and the Sustainable Development Principle.

Paragraph 3.34 of PPW states the countryside is a dynamic and multi-purpose resource. In line with sustainable development and the national planning principles and in contributing towards placemaking outcomes, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological, cultural and agricultural value and for its landscape and natural resources. The need to conserve these attributes should be balanced against the economic, social and recreational needs of the local communities and visitors.

There may be occasions when one benefit of a development proposal outweighs others, and in such cases robust evidence should be presented to support these decisions, whilst seeking to maximise contributions against all the well-being goals.

Key factors in the assessment process include:

- *Social Considerations*, including: - who are the interested and affected people and communities; who will benefit and suffer any impacts from the proposal; what are the short and long-term consequences of the proposal on a community;
- *Economic Considerations* including: - the numbers and types of long term jobs expected to be created or retained; whether, and how far, the development will help redress economic disadvantage or support regeneration priorities, for example by enhancing local employment opportunities

- *Cultural Considerations* including: - how far the proposal supports the conditions that allow for the use of the Welsh language; whether or not the development protects areas and assets of cultural and historic significance; have cultural considerations and their relationships with the tourism industry been appropriately maximised;
- *Environmental Considerations* including: - will important features of the natural and built environment be protected and enhanced; are the environmental impacts of development on health and amenity limited to acceptable levels and the resilience of ecosystems improved;

At 2.26 it further refers to the need to have an integrated approach to balancing priorities against policy on an individual basis, which enables the full range of costs and benefits over the lifetime of development to be taken into account.

Section 5 of PPW10 provides further emphasis on the need to develop 'Productive and Enterprising Places' which promote our economic, social, environmental and cultural well-being by providing well-connected employment and sustainable economic development.

The role of the Local Planning Authority is therefore to balance the weight to be attributed to each of the positive and negative impacts of the development and come to a balanced conclusion as to whether the development is acceptable or not.

### Balancing Environmental, Social and Economic Impacts

The assessment above has concluded (amongst other things) that: -

- the proposed development would not result in the loss of biodiversity in the long term subject to implementation of the proposed mitigation and enhancement measures which can be required by condition;
- Amenity impacts from noise and dust are temporary during construction and can be adequately controlled via planning conditions in order to avoid significant negative impacts;
- While some of the PRoW will not be reinstated along their historical alignment and modest diversions will be required to facilitate the earthworks, it is not considered that these diversions will undermine the holistic function of the PRoW network or impinge on public rights of access, whether within or across the site, or where PRoW may form contiguous links beyond. Moreover, a statutory process for the diversion of the definitive routes will however have to be followed in relation to PRoWs and in relation to temporary disturbance via engineering works on Common Land.

However, as described earlier in this report the proposed development will have adverse local impacts, notably in respect of the following: -

- **Landscape / Visual Impacts** - the assessment has identified major adverse visual impact for at least 15 years when viewed from the north and Brecon Beacons National Park in particular, and also from VP18 (within NPT) in views across the site towards the National Park. This will potentially have adverse

impacts on one of the National Park's statutory purposes namely "to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park". The NPA also have significant concern that the proposal will adversely impact on two of the Special Qualities of the Park — its "sweeping grandeur and outstanding natural beauty" and the "working, living "patchwork" of contrasting patterns, colours, and textures".

While the magnitude and severity of such impacts will soften over time through strategic landscaping (controlled by condition), and could subsequently be mitigated by year 15, it has to be accepted that the development will introduce large-scale and permanent landscape and visual change.

- **Heritage Impacts** - The development as proposed would have a major adverse impact on the Tramroad Scheduled Monument, with the loss of a section of the earthwork under the new embankment leading to a loss of legibility as well as the removal of part of its physical fabric. Given the archaeological and historical values of this monument, this would constitute a permanent major adverse significance of effect. For the purpose of this assessment it has been concluded that the extent of works and agricultural/nature conservation after use proposed by the current application would not constitute the necessary *exceptional circumstances* to outweigh the harm to the heritage asset, and thus development (in the scheduled area) would be contrary to PPW and TAN24.

A future proposal such as the GCRE *could potentially* provide the additional justification for the works to the Scheduled Monument necessary to amount to exceptional circumstances - albeit it is emphasised that this does not form part of this application and would require careful and detailed assessment at application stage.

In this respect, in the absence of such exceptional justification (which can only be considered under the later application), or SMC being issued, it is concluded that works should not be allowed within the scheduled area of the SM at this juncture. However, the report has also concluded that the major adverse impacts would be mitigated through the imposition of a *Grampian* condition that will prevent any works that will impact upon the scheduled area until such time as the Welsh Government has issued Scheduled Monument Consent for such works. Accordingly, while it is recommended that planning permission is issued for the development (based on the overall consideration of impacts, including the 'balance' within this part of the assessment) such adverse impacts would only arise in the event WG is satisfied with the detailed case put forward under the Scheduled Monument application (which will have regard to the economic case for the GCRE referred to below).

It should also be noted that Cadw's formal response stated that each Authority "will need to weigh this direct significantly adverse impact against the economic and other benefits. It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission".

Set against these significant impacts, however, are the *potential* wider economic benefits that would arise from the project. In this respect, for planning purposes the Welsh Government defines economic development as “the development of land and buildings for activities that generate sustainable long term prosperity, jobs and incomes”.

Having regard to the above and all identified impacts within this report, the following matters are of particular note and should be given appropriate weight in the ‘planning balance’: -

- The proposal in combination with the amended Nant Helen restoration scheme would provide a flexible landform that can be used or adapted for a diverse set of future uses. This could range from the traditional agriculture, woodland and nature conservation uses, to amenity, leisure and tourism uses (including the potential for future tourist accommodation to add to the existing offering within the BBNP) that would be designed to help take visitor pressure off the BBNP. In this regard the landform would also make an ideal bridleway / footpath for walking, cycling and horse riding.

There are considered to be benefits in providing a flexible and adaptable landform as a legacy of opencast mining developments, which has the potential to benefit the wider communities in NPT, Powys and the Brecon Beacons, providing long-term benefits in terms of recreation/leisure and the contribution those opportunities make to well-being. Such uses will positively contribute towards the WG vision for creation of healthy, thriving active places with a focus on a positive, sustainable future for our communities.

- As outlined in the socio-economic section above, an opportunity has arisen to provide a development which would potentially enable future development of national importance. At the same time as the Government is seeking a site for a Global Centre of Rail Excellence the Nant Helen Surface Mine is coming to an end. The Nant Helen site happens to have an existing rail link which is essential, along with an adjacent washery which provides the opportunity for associated built development for such a facility; earthworks can be aligned with site restoration thereby reducing costs; the land area is of sufficient scale to facilitate future development of a potential GCRE or future leisure uses, and the site is in the ownership of a single owner which simplifies any land deals necessary. This opportunity is unlikely to occur elsewhere in the Country. The only other site under consideration for a GCRE facility is understood to be in the north of England.
- This application is part of a programme of applications (which commenced with the amended restoration scheme for Nant Helen and will conclude with a future application for a GCRE). Facilitating the approval of the platform necessary for GCRE at this stage would not only provide such a rail project with the greatest opportunity for success through enabling advanced earthworks to be undertaken, but would demonstrate to potential organisations and partners that a significant obstacle to such development has been removed, thus providing a greater degree of certainty that such a project can be delivered at the site.

- It is anticipated that a planning application for the GCRE will be out to public consultation at the end of summer 2020, with an application following shortly thereafter.
- Conversely, refusing the application on the basis of the identified impacts would potentially fatally undermine the *potential* to deliver such a project in future. As set out in the socio-economic section above, the potential economic benefits of the GCRE proposal are significant and if the GCRE does not materialise the proposed landform provides other opportunities for the regeneration of this area.

As part of the generally positive and permissive National Policy context, Technical Advice Note 23 (Economic Development) emphasises (2.1.2) that where economic development would cause environmental or social harm which cannot be fully mitigated, careful consideration of the economic benefits will be necessary. It further notes that “there will of course be occasions when social and environmental considerations will outweigh economic benefit”, but then emphasises the need to answer the following three questions in order to help clarify and balance the economic, social and environmental issues.

1. **Alternatives:** if the land is not made available (i.e. the application is refused), is it likely that the demand could be met on a site where development would cause less harm, and if so where?

In this case, no viable alternative sites have been identified in Wales for a proposed rail centre of excellence, and it is understood one possible alternative site exists only in the North of England.

2. **Jobs accommodated:** how many direct jobs will be based at the site?

It is difficult to quantify at this stage how many direct jobs would be created as this is an enabling development which seeks to de-risk future development aspirations. What can be said with some confidence however is that the potential to create direct jobs would be significantly greater if this development is approved.

3. **Special merit:** would the development make any special contribution to policy objectives?

TAN23 states that industrial development in a disadvantaged area could help fight social exclusion, improve run-down places and create job opportunities for people at high risk of unemployment. In addition, PPW advises that the planning system should particularly support the low-carbon economy, innovative business / technology clusters. Developments that will provide space for these categories of businesses count as making special policy contributions. This development is seen as an enabler to a potential GCRE project which would support low carbon transport initiatives.

Accordingly, in balancing the key planning issues, considerable weight has to be given to the role of the proposed earthworks in providing a comprehensive, flexible and adaptable landform across the entire site.

## Post Covid-19 Recovery

The above arguments are considered to be put into even greater focus at the present time, with the application considered against a backdrop of the Covid-19 pandemic. In this respect it is notable that on 16<sup>th</sup> July 2020 the Welsh Government published [Building Better Places: The Planning System Delivering Resilient and Brighter Futures](#) which provides planning policy guidance for local planning authorities and the development industry on priorities for the planning system to deliver post Covid-19.

Notably the guidance includes a WG a commitment to follow through on infrastructure obligations which will go a long way in ensuring that the developments envisioned are delivered and the wider public benefits are maximised, and commitment that WG will play its role in supporting the vibrancy of places and helping this people-focussed and placemaking-led recovery.

Most pertinent to the economic benefits considered above, it states as follows: -

*“Through effective planning we can create a more resilient Wales where social, economic and environmental inequalities are identified and effectively addressed to create a more resilient and brighter future for all. This is a once in a generation opportunity for planning to have a positive effect on the future wellbeing of people in Wales and these policy considerations should be applied immediately to ensure we affect change in the most positive way possible.”*

Within this immediate context, and one which has seen the Valley communities especially hard hit (see NPT Community Impact Assessment), the opportunities that could come forward as a result of granting planning permission for this development are significant and, in the case of the GCRE have a hugely positive effect on the future wellbeing of people in this part of Wales.

In this regard, and having particular regard to the advice in PPW and TAN23, along with the recent guidance on post Covid-19 recovery in Wales: *Building Better Places: The Planning System Delivering Resilient and Brighter Futures*, and having considered the likely significant effects of the development on the environment – which can largely be mitigated by conditions - it is concluded that in the overall planning balance the proposal to create a flexible and adaptable landform in this location on a site previously worked for coal extraction would meet with sustainable place-making objectives while also having the potential to create significant social, economic, cultural and environmental benefits which would contribute towards ‘reinvigorating the Valleys’, and outweigh the identified impacts caused by the development.

## CONCLUSION

The decision to recommend 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. In addition, the Council, in accordance with Section 3(3) of the Town and

Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016, has taken all the environmental information into consideration.

Having particular regard to the advice in PPW and TAN23, along with the recent guidance on post Covid-19 recovery in Wales: *Building Better Places: The Planning System Delivering Resilient and Brighter Futures*, and having considered the likely significant effects of the development on the environment – which can largely be mitigated by conditions - it is concluded that in the overall planning balance the proposal to create a flexible and adaptable landform in this location on a site previously worked for coal extraction would meet with sustainable place-making objectives while also having the potential to create significant social, economic, cultural and environmental benefits which would contribute towards ‘reinvigorating the Valleys’, and outweigh the identified impacts caused by the development.

Accordingly, the proposed development is in accordance with Policies SP1, SP2, SP3, SP4, SP6, SP11, SP14, SP15, SP16, SP20, SP21, SP22, SC1, I1, EC5, TO4, EN2, EN6, EN7, EN8, M1, M3, TR2, TR3, TR4, BE1, BE2

RECOMMENDATION      APPROVE subject to the conditions listed below

#### Time Limits

1. The development shall begin no later than five years from the date of this decision.

Reason:

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

#### Approved Plans

2. The development hereby permitted shall be carried out in accordance with the following documents and plans or as otherwise modified by any revisions or by other conditions, schemes or approvals by the Local Planning Authority:
  - Planning Application Validated on 15<sup>th</sup> May 2020.
  - Planning Statement – April 2020
  - Environmental Statement (including Figures and Appendices) – May 2020.
  - Drainage Strategy – April 2020
  - Proposed Finished Levels - Plans 1, 2, 3 and 4
  - Proposed Track Embankment and Cutting Cross Section (Drawing No CG1024)
  - Cae-Hopkin and Brooklands Terrace Embankments, Cefn Byrle Cutting: Plan and Sections (Drawing No CG1063)

Reason: Required to be imposed pursuant to Section 71ZA of the Town and Country Planning Act 1990 (as amended).

## Pre-Commencement Conditions

3. Before beginning any development at the site, you must do the following: -

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

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

Reason:

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

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)

4. No development shall take place (including demolition, ground works, and vegetation clearance) until such time as a Dust Management Action Plan has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be implemented at all times for the duration of site preparation and construction of the earthworks hereby approved.

Reason: To protect the living conditions of nearby residents in compliance with Policies SP2, SP16 and EN8 of the LDP.

5. No development shall take place (including demolition, ground works, and vegetation clearance) until such time as a Noise Monitoring and Management Action Plan has been submitted to and approved in writing by the Local planning Authority. The approved plan shall be implemented at all times for the duration of site preparation and construction of the earthworks hereby approved.

Reason: To protect the living conditions of nearby residents in compliance with Policies SP2, SP16 and EN8 of the LDP.

6. No development shall commence or be undertaken within the area identified in green on plan NPT1/PCC1 until such time as the Welsh Ministers have formally issued Scheduled Monument Consent for all works within that area affecting the Scheduled Monument known as the Tramroad at Ystradgynlais (CH001).

Should Scheduled Monument Consent not be forthcoming for such works, no later than one year following commencement of development (as notified under condition 3), or such other period that may be agreed in writing by the Local Planning Authority, the developer shall submit to the Local Planning Authority for written approval full details, including levels, drainage and landscaping, of an alternative landform which excludes development inside the scheduled area and ties into the adjacent earthworks. Development shall be undertaken in full compliance with the amended plans approved under this condition which for the purposes of clarity shall supersede any other plans which relate and identify the degree of disturbance to the SM within the identified area on plan NPT1/PCC1.

Reason:

Since the works proposed within the scheduled area of the tramroad at Ystradgynlais and within its immediate setting do not currently amount to the exceptional circumstances necessary to justify such development under PPW and TAN24, and will therefore only be acceptable on the formal issuing of Scheduled Monument Consent by Welsh Ministers, such consent process considering at that time all matters material to their assessment.

7. No works shall commence on the construction development shall take place (including demolition, ground works, and vegetation clearance) until such time as the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved in writing by the Local Planning Authority. The archaeological programme of work will be undertaken and completed in accordance with the relevant Standards and Guidance laid down by the Chartered Institute for Archaeologists. A copy of the resulting report should be submitted to the Local Planning Authority. After approval by the Local Planning Authority, a copy of the report and resulting archive should also be sent to the Historic Environment Record Officer, Glamorgan Gwent Archaeological Trust for inclusion in the regional Historic Environment Record and the National Monuments Record, RCAHMW.

Reason: To protect the historic environment in compliance with Policy BE2 of the LDP.

8. No development shall take place (including demolition, ground works, and vegetation clearance) until a detailed Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP must include (but not be limited to) the following:
  - Risk assessment of potentially damaging construction activities.
  - Construction Methods: details of materials, how waste generated will be managed.
  - General Site Management: details of the construction programme including timetable, details of site clearance, details of site construction drainage, containment areas, implementation of appropriately sized buffer

zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse and surface water drain.

- Resources Management: details of fuel and chemical storage and containment, details of waste generation and its management, details of water consumption, wastewater, and energy use.
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- Pollution Prevention Plan: demonstrating how relevant Guidelines for pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- Invasive Non-Native Species Management Plan.
- Details of task and security lighting to avoid disturbance of habitats of importance to crepuscular or nocturnal species.
- Responsible persons and lines of communication and emergency contact details.
- Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the site preparation and construction period strictly in accordance with the approved details.

Reason:

To comply with Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

9. No development shall take place (including ground works and vegetation clearance) until an Ecological Protection Plan (EPP) has been submitted to and approved in writing by the local planning authority. The EPP shall include the following.

- Risk assessment of potentially damaging construction activities.
- Details of Pre-commencement Surveys, including methodologies and timing.
- Identification of “biodiversity protection zones”.
- Reptile trapping and relocation method statement including details of receptor sites.
- Vascular Plant Species translocation method statements (specifically common wintergreen, lesser bulrush, floating bur-reed, greater tussock sedge and spiked water milfoil, royal fern and viviparous fescue).
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts to retained features of ecological importance during construction (may be provided as a set of method statements).
- The location and timing of sensitive works to avoid harm to ecological features of importance.

- The times during construction when specialist ecologists need to be present on site to oversee works.
- Responsible persons and lines of communication.
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- Use of protective fences, exclusion barriers and warning signs.

The approved EPP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason:

To comply with Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

10.No development shall take place (including ground works, and vegetation clearance) until a detailed 25 year Ecological Management and Monitoring Plan (EMMP) has been submitted to, and approved in writing by, the local planning authority. The purpose of the plan shall be to detail the habitat creation and enhancement, management and monitoring protocols as outlined in Section 7.20 of the Nant Helen Complementary Restoration Earthworks Environmental Statement produced by Ove Arup & Partners Ltd dated 4th May 2020. The content of the EMMP must include (but not be limited to) the following:

- Purpose and conservation objectives for the proposed works.
- Review of site potential and constraints.
- Detailed design(s) and/or working method(s) to achieve stated objectives.
- Extent and location/area of proposed works on appropriate scale maps and plans.
- Type and source of materials to be used where appropriate.
- Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- Persons responsible for implementing the works.
- Details of initial aftercare and long-term maintenance.
- Aims and objectives of monitoring to match the stated purpose.
- Identification of adequate baseline conditions prior to the start of development.
- Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.
- Methods for data gathering and analysis.
- Location of monitoring.
- Timing and duration of monitoring – appropriate to the habitat/feature concerned.
- Responsible persons and lines of communication
- Review, and where appropriate, publication of results and outcomes.

A Report describing the results of monitoring shall be submitted to the local planning authority at intervals identified in the EMMP. The report shall also set out (where the results from monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with the local planning authority, and then implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The EMMP will be implemented in accordance with the approved details.

Reason:

To comply with Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

11. No development, demolition, earth moving shall take place or material or machinery brought onto the site until protective fencing and warning signs have been erected on site in accordance with the approved Construction Environmental Management Plan and Ecological Protection Plan. All protective fencing and warning signs will be maintained during the construction period in accordance with the approved details.

Reason: To comply with Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

12. No development shall take place (including ground works, and vegetation clearance) until a Materials Handling Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall make provision for the stripping, conservation, management, storage and re-spreading of all topsoil and subsoil resources, and shall ensure that there is no importation of material unless it is first approved in writing by the local planning authority.

Reason: To ensure that natural resources existing on the site are managed to avoid loss and/or destruction, ensure all material that might be required to be brought onto the site is chemically suitable for the proposed end use, and to ensure accordance with Policy EN8 of the Local Development Plan.

13. No development shall commence until a preliminary investigation and assessment of the nature and extent of contamination affecting the application site area has been submitted to and approved in writing by the local planning authority. This investigation and assessment must be carried out by or under the direction of a suitably qualified competent person, in accordance with extant guidance and best practice, and shall assess any contamination on the site, whether or not it originates on the site.

The report of the findings shall include:

- A desk study
- A non-intrusive site reconnaissance
- Formulation of an initial conceptual model
- A preliminary risk assessment

If the preliminary risk assessment identifies there are potentially unacceptable risks a detailed scope of works for an intrusive investigation, including details of the risk assessment methodologies, must be prepared by a suitably qualified competent person. The contents of the scheme and scope of works are subject to the approval in writing of the local planning authority.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy EN8 of the Local Development Plan.

14. No development shall take place until a site investigation of the nature and extent of contamination has been carried out, by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins.

The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of 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 offsite receptors in accordance with Policy EN8 of the Local Development Plan.

15. If the presence of contamination is confirmed in the report required by Condition 15 above, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, buildings, other property and the natural and historical environment shall be prepared and submitted to and approved in writing by the local planning authority. The scheme shall include all works to be

undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The measures proposed within the remediation scheme shall be implemented in accordance with an agreed programme of works. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 14 has been received from 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 offsite receptors, and to ensure compliance with Policies SP16 and EN8 of the Neath Port Talbot Local Development Plan.

16. All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy EN8 of the Local Development Plan.

### Action Conditions

17. Works shall not commence on the northern embankment, until such time as a Landscape Strategy and associated scheme of Landscape Mitigation Planting – which shall include but not be limited to the northern face of the embankment as shown on Figure 9.16: Landscape Mitigation – has been submitted to and approved in writing by the Local Planning Authority. Such landscape strategy shall cover a period of no less than 20 years, and shall include a mechanism for review and extension in the event planting has not mitigated the impacts on the National Park to the extent identified in the Environmental Statement. The scheme shall be implemented in accordance with the approved details.

Reason:

To ensure that an appropriate scheme of planting is provided to mitigate the visual impact of the earthworks, both from the Brecon Beacons National Park and from Neath Port Talbot and Powys area and to ensure compliance with Policy BE1 of the Local Development Plan.

18. Any remediation scheme submitted in relation to Condition 16 shall be subject to a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of duration to be agreed in writing with the local planning authority and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority.

The initial report shall be submitted within six months following the completion of the measures identified in the remediation scheme and the achievement of the remediation objectives, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy EN8 of the Local Development Plan.

19. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, work on site shall cease immediately and shall be reported in writing to the Local Planning Authority. A Desk Study, Site Investigation, Risk Assessment and where necessary a Remediation Strategy must be undertaken in accordance with the following document:- Land Contamination: A Guide for Developers (WLGA, WAG & EAW, July 2006). This document shall be submitted to and agreed in writing with the Local Planning Authority. Prior to occupation of the development, a verification report which demonstrates the effectiveness of the agreed remediation, shall be submitted to and agreed in writing with the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors, and to ensure compliance with Policies SP16 and EN8 of the Neath Port Talbot Local Development Plan.

## Regulatory Conditions

20. Except in an emergency which shall be notified to the Local Planning Authority as soon as practicable, development, which includes the starting up of plant and machinery, or other activities associated with the development (other than water pumping, servicing, environmental monitoring, maintenance and testing of plant) authorised or required by this permission shall be limited to 0600 - 2200hrs Monday to Friday and 0700 - 1300hrs on Saturdays.

Reason:

To protect the living conditions of nearby residents in compliance with Policies SP2, SP16 and EN8 of the LDP.

21. Notwithstanding condition 19 above, works related to the construction of the northern embankment, including all ground works involving excavations, shall be limited to the following times, between 07.00 to 18.00 hours Mondays to Fridays (excluding Bank/Public Holidays) and 08.00 to 13.00 hours on Saturdays.

Reason:

This condition is included to ensure consistency with the associated decision of Powys County Council, and to protect the living conditions of nearby residents.

22. Noise arising from operations at the site as measured at any noise sensitive location shall not exceed background (LA90) plus 10dB LAeq,1hr or 55dB LAeq,1hr (free field), whichever is the lesser, during normal working hours (0700 to 1900 hours Monday to Friday excluding Bank/Public Holidays and 08.00 and 12.00 hours on Saturdays). At all other times the noise arising from operations at the site shall not exceed 42dB LAeq, 1hr (free field) at any noise sensitive location.

Reason:

To protect the living conditions of nearby residents in compliance with Policies SP2, SP16 and EN8 of the LDP.

23. Notwithstanding the noise level limits set out in Condition 21, between 08:00 and 18:00 Mondays to Fridays (excluding Bank/Public Holidays) and 08:00 and 12:00 the level of noise from operations consisting of the construction of the northern embankment shall not exceed the following levels, measured as dB LAeq,1hr (free field), at the noise sensitive locations specified below (as identified on Figure 10.1: Noise Sensitive Receptors for Northern Embankment): -

Receptor 1 - 61

Receptor 2 - 57

Receptor 3 – 60

Receptor 4 – 54

These levels shall apply only between 08.00 to 18.00 hours Mondays to Fridays (excluding Bank/Public Holidays) and 08.00 to 12.00 hours on Saturdays

Reason: This condition is included to ensure consistency with the associated decision of Powys County Council, and to protect the living conditions of nearby residents.

24. Any approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority. The verification report contents must be agreed with the local planning authority before commencement of the remediation scheme.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WLGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy EN8 of the Local Development Plan.