



Adroddiad

Ymchwiliad a agorwyd ar 3/02/04
Ymweliad â safle a wnaed ar 11/02/04

Report

Inquiry opened on 3/02/04
Site visit made on 11/02/04

gan/by Andrew Phillipson BSc CEng FICE MIHT

**Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru**

**an Inspector appointed by the National
Assembly for Wales**

Dyddiad/Date **30-03-2004**

Section 78 of the Town and Country Planning Act 1990

Appeal

By

Walters Mining Limited

Site at

Winch Fawr West, Winch Fawr Road, Heolgerrig, Merthyr Tydfil.

Cyf ffeil/File ref: APP/U6925/A/02/1097644

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Site address: Winch Fawr West, Winch Fawr Road, Heolgerrig, Merthyr Tydfil.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Walters Mining Ltd against the decision of Merthyr Tydfil CBC.
- The application Ref P/00/0230, registered by the Council on 18 May 2000, was refused by notice dated 15 February 2002.
- The development proposed is the reclamation of derelict land accompanied by extraction, processing and sale of coal and sandstone. Associated storage of soils and overburden, construction of water treatment areas and office accommodation.

Summary of Recommendation: That the appeal be dismissed.

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1. PROCEDURAL MATTERS

- 1.1 The inquiry opened on 3 February 2004. It sat for 7 days and closed on 12 February 2004. During the course of the inquiry, I made an accompanied visit to the site and the surrounding area on 11 February. On 12 February I made an accompanied visit to see restoration works at the Nant Helen opencast site.
- 1.2 Some of the operations described in the planning application documents would take place within the administrative area of the Rhondda Cynon Taff CBC. Planning permission has already been granted for this linked development (CC26).
- 1.3 The application was accompanied by an Environmental Statement (ES) (CC1). Before the Council determined the application, further environmental information was supplied in response to requests from the Council and consultees (CC3 to CC6). In May 2003 a further batch of environmental information was supplied, following a request from the National Assembly (CC23). In preparing this report, I have taken account of this environmental information and all other environmental information supplied and representations made about the environmental effects of the development.
- 1.4 Following the requests for further environmental information, minor variations were made to the proposals. In particular, a “Heritage Conservation Area” was defined (Plan B4), replacing the previous “Optional Reclamation Area” (Plan A1). Works within this area were defined more closely and the locations of the proposed baffle mound and water treatment areas were adjusted to avoid features of historical interest. Further details were also provided on the intended sequence of excavation and the proposed restoration strategy (Plans B1 to B7).
- 1.5 On Day 5 of the inquiry, a possible further modification was tabled by Walters Mining Ltd (WML) (Plans C1 and C2). The proposal involved reducing the plan area of the overburden mound, but increased its height by 5.0m. It was put forward with the aim of limiting the impact of the overburden mound on features of historical interest lying beneath it in the northern sector of the site. The Council responded to the proposal, noting that the amendments were such that, had they been submitted to the Council prior to the application’s determination, then the Council would have regarded them as substantive and would have re-advertised the proposals and re-consulted the relevant statutory consultees (MTCBC16). In the light of this response, WML indicated that they would not be pursuing this alternative at the inquiry.
- 1.6 During the course of the inquiry *Minerals Technical Advice Note MTAN (Wales) 1: Aggregates* was published. It was drawn to the attention of the parties and they were invited to present supplementary evidence regarding any matters of particular relevance to the appeal before the inquiry closed.
- 1.7 Chapter 2 of this report contains a description of the site and the surrounding area. This is followed by chapters briefly describing the proposals and summarising the relevant planning policies. Chapter 5 introduces and summarises the statements of common ground. The following chapters set out the gist of the cases made by each of the inquiry participants, case by case. The main point made by those who submitted written representations are also recorded. The final chapters contain my conclusions and recommendations.

- 1.8 A list of the persons who appeared at the inquiry is provided in Appendix A. A list of the documents submitted is provided at Appendix B. A list of abbreviations used in the report can be found at Appendix C.

2. THE SITE AND SURROUNDINGS

The Appeal Site

- 2.1 The appeal site comprises some 98.5ha of land lying at the western edge of the administrative area of Merthyr Tydfil, between the A465(T) Heads of the Valleys Road and the ridge of Mynydd Aberdar.
- 2.2 The site slopes naturally from 430m AOD at its southern corner to around 320m AOD at its north-eastern extremity. It is open and used mainly for low-intensity grazing by sheep. Internally, its topography reflects its former use for iron and coal extraction and there are numerous discard tips of varying size on the site as well as evidence of former adits and shafts and opencast coal and quarry workings (Photo A). For the most part, the ground is covered with a mosaic of unimproved acid grassland, marshy grassland, dry ericaceous heath and wet heath with acidic flushes. There are some 20 ponds of varying size and depth scattered across the site (ES, Figure 22). With the exception of the conifer plantation to the west (which is for the most part outside the site boundary) the site is devoid of trees. There are no buildings or other structures of any note within the site.
- 2.3 Apart from its use for grazing, the only other recent use of the site has been for ad hoc motor cycle scrambling conventions on land near to the northern boundary.
- 2.4 The north-eastern section of the site abuts the Castle Park and Beacon Heights housing areas and the south-eastern corner approaches the edge of Winch Fawr. To the west there is a single isolated dwelling “Bryn-y-Gwyddel” alongside the B4276 to the west of the conifer plantation. This is around 300m from the site boundary and 500m from the excavation area and overburden mound. The Baverstocks Hotel lies some 350m west-north-west of the site, on the northern side of the Heads of the Valleys Road.
- 2.5 The boundary of the Brecon Beacons National Park lies some 320m north of the application site and some 800m from the proposed excavation area (ES, Figure 1). The site is visible from within the national park, and it can be clearly seen from the Cil Sanws Golf Course, some 2.0km to the north-east. Because of its elevated location the site can also be seen from many locations within the urban area of Merthyr Tydfil, including the Cyfarthfa Castle grounds.
- 2.6 From the Heads of the Valleys Road there are clear views into the northern section of the site. Views of the southern end are, however, largely restricted by the intervening topography. Similarly, residents living on the edge of the Castle Park and Beacon Heights housing areas have clear views over the adjoining parts of the site, but views of the wider site are restricted by the topography.

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- 2.7 There are plans to dual the Heads of the Valleys Road where it passes the site and a small area of the land within the site would be required for these works (Plan E). This would not be affected by the proposal.
- 2.8 Vehicular access to the site is currently available via tracks leading from the B4276 and Winch Fawr Road. Within the site, several footpaths and unmade tracks cross the land, but none of these are registered as legal Rights of Way¹.
- 2.9 Currently there are no designated Sites of Special Scientific Interest (SSSI) or Sites of Importance for Nature Conservation (SINC) within the site. However, the whole of the application area is identified as a candidate SINC (cSINC).
- 2.10 The application site lies within the Merthyr Tydfil Landscape of Outstanding Historic Interest, identified on the non statutory Register of Landscapes of Outstanding Historic Interest in Wales.
- 2.11 Within the site, the “Iron Ore Scours and Patch Workings at Winch Fawr” are scheduled under the Ancient Monuments and Archaeological Areas Act 1979 (CC54). The scheduled area extends to approximately 10ha. It lies within the Heritage Conservation Area in the north-east corner of the site abutting the Castle Park and Beacon Heights estates. Further Scheduled Ancient Monuments stand outside the site (ES, Figure 18).
- 2.12 The Lower and Middle Carboniferous coal measures outcrop on the site and the coal and ironstone seams were extensively exploited principally from the end of the 18th Century through to the first half of the 19th Century as mineral resources for the Cyfarthfa Ironworks. Subsequently, coal extraction continued in the 20th Century, finishing in the 1960’s with some opencast coal extraction and quarrying undertaken in conjunction with the construction of the A465(T). There are 77 recorded mine entries within or close to the site. The seams dip to the south at an angle of around 8 degrees.
- 2.13 No major services or other apparatus belonging to statutory undertakers would be affected by the proposals.

3. THE PROPOSALS

Note. The proposals are summarised below. For a fuller description of the mining operations see Mr Richards’ proof of evidence (WML1, pages 18-26). Further details of the proposals for ecological restoration and aftercare can be found in Mr Pryce’s proof of evidence (WML3, pages 36-42). Proposals for protecting the historic landscape features associated with the Phase 2 Cyfarthfa workings under the overburden mound are described in Mr Richards’ proof of evidence (WML1, Appendix 10, Annex 1).

- 3.1 The appeal scheme seeks planning permission for the reclamation of derelict land accompanied by the extraction, processing and sale of coal and sandstone. Associated works include the temporary storage of soils and overburden from the extraction area

¹ A Legal Right of Way (Footpath – Aberdare No. 71) leads from the B4276 in Rhondda Cynon Taff to the County Borough border. This path continues within the County Borough of Merthyr Tydfil but is not registered as a Legal Right of Way. A further Claimed (but not Registered) Right of Way crosses the site from Winch Fawr Village to the Baverstocks Hotel.

and the construction of facilities for water treatment and restoration works. These works all fall within the administrative area of Merthyr Tydfil CBC and are subject to the appeal.

- 3.2 Additionally, a site administration area would be provided together with an access road linking the site to the B4276. The administration area would contain a coal preparation area and plant yard, car park, offices and welfare facilities, together with a weighbridge, fuel storage area and a plant fitting shop. The new access road would join the B4276, at an improved junction some 800m south of its junction with the A465(T). These works fall within the administrative area of Rhondda Cynon Taff CBC and are not subject to the appeal.
- 3.3 In total the appeal site occupies some 98.5ha of land. Of this, some 68.5ha would be operational, comprising an extraction area of 32.5ha and areas for the storage of overburden and soil, water treatment areas and the site administration area.
- 3.4 The extraction area would be located in the south-western sector of the site (Plan B1). 400,000 tonnes of Welsh Dry Steam Coal and up to 250,000 tonnes of Pennant Sandstone would be recovered from the area, which would be dug to a maximum depth of 50m below the existing ground level. The extraction area would be worked progressively from east to west. The main overburden storage area would be located to the north of the extraction area, rising to a height of 25m above existing ground level. The areas for storage of topsoil and for water treatment would be ranged around the periphery of the main operational area.
- 3.5 All coal and sandstone would be removed from the site by lorry. All overburden and soils would be retained on site and used in the restoration works.
- 3.6 Outside the operational area a “Heritage Conservation Area” would occupy the northern and eastern sectors of the site. No extraction would take place in this area and reclamation work would be restricted to making safe adits, crown holes and the like, the removal of fly tipped material, and making good areas of damaged vegetation. The scar formed by the “Old Highwall” opencast workings would be backfilled.
- 3.7 Additional ponds would be dug in this area, and some existing ponds would be improved, to provide additional breeding habitat for Great Crested Newts relocated from within the operational area of the site.
- 3.8 The total project duration is anticipated to be some 40 months. Within this, the main coal extraction and overburden replacement phase is expected to last some 30 months. Hours of work would be regulated by condition to 0700 to 1900 on Mondays to Fridays and 0800 to 1300 on Saturdays for general operations. However, haulage of coal away from the site would be restricted to 0730 to 1630 on Mondays to Fridays and 0800 to 12.30 on Saturdays. Work in the Heritage Conservation Area would be restricted to 0800 to 1800 on Mondays to Fridays and 0800 to 1300 on Saturdays. No work would be undertaken on Sundays or public holidays.
- 3.9 Works during the operational phase would be undertaken with the objective of preserving and, where possible, enhancing the site’s nature conservation value. Before works commence Great Crested Newts would be trapped on the operational area and transferred to new and improved ponds in the Heritage Conservation Area. Soil

stripping, storage and placement operations would be carried out with the aim of preserving the existing vegetation and seed bank. A detailed restoration strategy would be drawn up and agreed with the Council. Works in the operational phase would be supervised by an ecologist who would continue to provide advice on the site's aftercare. Management of the site in the aftercare period would be targeted at restoring and improving the ecological habitat value of the site.

- 3.10 Where appropriate, works would also seek to preserve the site's historic landscape features. All the important features within the Heritage Conservation Area would be preserved. In the operational area, the tips and other features associated with the early phases of the Cyfarthfa ironworks would be surveyed before works commence. Those parts of the Phase 2 Cyfarthfa workings lying under the overburden mound would be protected with a geotextile membrane and a layer of granular fill before the overburden mound is placed over them (WML 17). Subsequently, they would be carefully re-excavated. Elsewhere in the operational area, the remaining Phase 2 workings would be recorded in advance. A watching brief would also be maintained to ensure that any buried remains connected with the earlier workings are appropriately recorded. No works other than those authorised by Cadw would be carried out within the boundary of the Scheduled Ancient Monument.

4. PLANNING POLICY

The Development Plan

- 4.1 The development plan comprises the Mid Glamorgan (Merthyr Tydfil County Borough) Replacement Structure Plan 1991-2006 and the Merthyr Tydfil Borough Local Plan, adopted in May 1999.

The Structure Plan (CC35)

- 4.2 The stated minerals strategy of the Structure Plan is (para 2.4.6) "To ensure that, whilst protecting the environment as far as possible, there should be a continuing basis for the minerals industry in the County to meet the needs of society".
- 4.3 Policies MIN1 and MIN2 set down the criteria against which proposals for mineral extraction (MIN1) and open pit minerals workings, including opencast coal workings (MIN2) will be judged. Minerals workings will only be permitted where, amongst other matters, measures can be taken to reduce environmental damage or disturbance to acceptable levels, and where the proposals for restoration, after care and beneficial after-use are suitable. The scale of working should not lead to unacceptable disruptive effects on the local community; and measures should be taken to reduce damage or disturbance to neighbouring land uses to acceptable levels, including the effects of excessive noise, dust and vibration.
- 4.4 The environmental strategy (para 2.4.3) seeks to protect the countryside for its own sake and to protect important features of the natural and built environment of the County, by introducing special designations and controls. It also seeks to maintain a viable agricultural sector in the County, whilst taking into account the need to conserve the

quality of the rural landscape and the need to strengthen and diversify the rural economy.

- 4.5 Policies EV5 and EV6 deal with sites of recognised importance for nature conservation. Where these sites are of national or international importance, policy EV5 sets down a presumption against any development that would damage or disturb them. For sites of local importance, as defined in local plans, the policy provides that development will only be permitted where suitable measures can be taken to ensure the survival of habitats, species or features. Policy EV6 states that before development is approved that would disturb or destroy a site of importance for nature conservation, the applicant should make provision for a detailed evaluation of the nature conservation value of the site and protection of the habitats, species and features within it, or, where this is not possible, the establishment of a suitable replacement site.
- 4.6 Policies EV10 and EV12 deal with the protection of the built heritage. Policy EV10 states development will not be permitted where it is likely to destroy or damage the existing character of archaeological sites or ancient monuments of national importance. Where archaeological features and sites of recognised local interest are affected, the policy provides that development that would destroy or damage their character, or which fails to preserve, maintain or enhance their features of interest, will not normally be permitted. However, the text following this policy recognises that in some cases the need for a development will outweigh any adverse effects on archaeological sites or ancient monuments. Where this is the case, policy EV12 provides that, before such a development is approved, provision should be made for an early archaeological evaluation of the site and its preservation in situ, or, if this is not possible, the recording and the rescue of important artefacts.
- 4.7 On derelict land, the strategy seeks clearance of all major dereliction in the County within the plan period. This is reflected in policy D1, which states that “all identified derelict land will be subject to treatment appropriate to the condition and nature of the site and proposed after uses during the plan period”. Policies D5 and D6 develop this theme, stating:

Where a site contains features of nature conservation,historic or industrial archaeological interest,the protection and enhancement of those features will be taken into account in the design and implementation of the reclamation scheme....(policy D5); and

In each reclamation scheme, restoration should be undertaken so as to conserve or replace areas of nature conservation interest, or to create new habitats, wherever this is compatible with the proposed after-uses of the site (policy D6).

The Local Plan (CC34)

- 4.8 The local plan contains no minerals policies. On derelict land, policies GR1 and GR2 are key to the appeal. Policy GR1 states that development proposals¹ will be permitted subject to consideration against certain criteria. These criteria require, amongst other

¹ The text explains that development, in the context of policy GR1, includes the physical implementation of engineering works necessary for the restoration scheme.

matters, firstly, that adequate site investigations are undertaken to establish the exact nature and scale of the reclamation and treatment works required (including the need to retain features of water, wildlife, geological and historic interest identified during the assessment and design of the scheme). Secondly, that the reclamation is undertaken in a manner which adequately safeguards public safety and amenity and includes an agreed monitoring, aftercare and restoration programme. And, thirdly, that the scale of the proposal is acceptable having regard to dust, odour and noise emissions.

- 4.9 The text following the policy, and the Proposals Map, identifies the site as comprising policy areas DL4 (Bryn-y-Gwyddel) and part of DL5 (Bryn-y-Badell) (WML21). The recommended treatment and after-use of both areas is identified as “recontouring for forestry and amenity”. Policy GR2 identifies area DL4 (Bryn-y-Gwyddel) for inclusion in a priority reclamation programme in the period 1995-2006.
- 4.10 Natural heritage policies in the plan broadly mirror those in the Structure Plan. Policy NH1 requires development outside the defined settlement boundaries to clearly outweigh the value of protecting the countryside for its own sake. Amongst other matters, it should not have an unacceptable impact on the character, amenity and landscape character of the area, and not pose an unacceptable risk to sites of nature conservation interest. It should not compromise the enjoyment of public rights of way and other forms of public access to the countryside.
- 4.11 Policy NH5 deals with sites of importance for nature conservation (SINCs). It provides that, for sites identified in the Local Plan, development will only be permitted where full account has been taken of the features so as to minimise the damage to the nature conservation value. Where planning permission is contemplated, it states that conditions or agreements will be employed to safeguard features or to provide appropriate compensatory measures. The sites are listed, but not shown on the Proposals Map¹. The text to the policy notes (para 4.16) that “the Council will give extensive weight to the status of a SINC in order to secure its preservation and sustainability”. It further notes that CCW is currently working on a field survey which will include the Borough and that further sites are likely to be added to the list of SINCs following completion of this and other surveys.
- 4.12 Policy NH7 lays down criteria against which proposals affecting the water environment will be judged.

Other Local Planning Documents

- 4.13 Other local planning documents include the Countryside Strategy 1997-2002 (CC37) and the Countryside Action Programme 1999-2002 (CC36); the adopted Merthyr Tydfil Biodiversity Action Plan 2002-2007 (CC39) and the Merthyr Tydfil LANDMAP (CC40). The Merthyr Tydfil Unitary Development Plan Pre-Deposit Consultation and Issues Report (CC38) has also been published.

¹ I was advised that this was because, at the time the Local Plan was published, the site boundaries had not been confirmed. The boundaries are shown on MTCBC12.

National Planning Guidance

- 4.14 At the national level, *Planning Policy Wales (PPW)*, *Minerals Planning Policy Wales (MPPW)* and *Technical Advice Note (Wales) 5: Nature Conservation and Planning (TAN 5)* are particularly relevant.
- 4.15 *PPW* sets down the Assembly's commitment to sustainable development. It stresses at paragraph 2.1.4 that the Assembly's Sustainable Development Scheme means pursuing four objectives at the same time, namely:
- social progress which recognises the needs of everyone;
 - effective protection of the environment;
 - prudent use of natural resources; and
 - the maintenance of high and stable levels of economic growth and employment.
- 4.16 Chapter 5 covers the natural environment. It advises that the Assembly Government's objectives for the conservation and improvement of the natural heritage are to:
- promote the conservation of landscape and biodiversity, in particular the conservation of wildlife and habitats;
 - to ensure that Wales contributes to meeting its international responsibilities and obligations for the natural environment;
 - ensure that statutorily designated sites are properly protected and managed; and to
 - safeguard protected species.
- 4.17 Paragraph 5.2.4 advises that the Assembly are committed to promoting Habitat and Species Action Plans relevant to Wales, prepared under the UKBAP in fulfilment of its obligations under the Countryside and Rights of Way Act. In paragraph 5.2.7 it states that local planning authorities must address biodiversity issues insofar as they relate to land use planning, in both UDPs and development control decisions. Paragraph 5.5.12 contains a reminder that new developments for which the works would contravene the protection afforded to European protected species require derogations from the provisions of the Habitats Directive. It further advises that:

A derogation may only be authorised if there is no satisfactory alternative and if the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. The development works to be authorised must be for the purposes of preserving "public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment".

- 4.18 Chapter 6 sets out the Assembly Government’s objectives for the historic environment. These include preserving and enhancing the historic environment and protection of archaeological remains. Paragraph 6.1.2 reminds local planning authorities that they have a key role to play in securing the conservation of the historic environment whilst ensuring that it accommodates and remains responsive to present day needs.
- 4.19 Paragraphs 6.5.1 to 6.5.6 deal with archaeological remains. Paragraph 6.5.1 states that, where nationally important remains are likely to be affected, there should be a presumption in favour of their physical preservation in situ. In cases involving lesser remains, local planning authorities will need to weigh the relative importance of the archaeology against other factors, including the need for the proposed development.
- 4.20 *MPPW*, at paragraph 10, confirms that the overriding objective is to provide a sustainable pattern of mineral extraction by adhering to five key principles, namely to:
- provide mineral resources to meet society’s needs and to safeguard resources from sterilisation;
 - protect areas of importance to natural and built heritage;
 - limit the environmental impact of mineral extraction;
 - achieve high standard restoration and beneficial after-use; and to
 - encourage efficient and appropriate use of minerals and the re-use and recycling of suitable materials.
- 4.21 Policies on energy mineral are set down in paragraphs 15 and 16. The introduction notes that demand for energy minerals is largely based on power generation and is difficult to predict long-term because of the highly volatile nature of current world markets and prices; and that this uncertainty makes planning to meet the needs for energy minerals very difficult. Against this background, local planning authorities are urged to provide as much guidance in their unitary development plans as possible to indicate where it is likely to be environmentally acceptable for these resources to be worked.
- 4.22 Guidance on coal is provided in paragraphs 61 and 62. Paragraph 61 states that the Government’s central energy policy is to ensure a diverse and sustainable supply of energy at competitive prices and that this objective takes in the Government’s concern for the environment, health and safety and a fair deal for all consumers, as well as its commitment to all aspects of sustainable development. It notes that opencast coal is generally more flexible to produce and cheaper than deep-mined coal, but that there are important amenity issues involved that require “very careful consideration”.
- 4.23 Paragraph 62 states that opencast developments should not be approved unless, firstly, the proposal is environmentally acceptable or can be made so by the imposition of planning conditions or obligations; and secondly, there us no lasting environmental damage. If this cannot be achieved, then the proposal should provide local or community benefits which clearly outweigh the disbenefits of likely impacts in order to justify the grant of planning permission.
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- 4.24 Policies in *MPPW* concerning the need to protect areas of nature conservation value and archaeological remains do not materially add to the policy guidance contained in *PPW*.
- 4.25 *TAN5* notes at paragraph 28 that statutory and non-statutory nature conservation sites all contribute to the network necessary to ensure maintenance of the current range and diversity of our flora, fauna, geological and landform features and the survival of important species. Sensitive landscape planting, the creation, maintenance and management of landscape features important to wildlife, and the skilled adaptation of derelict areas can provide extended habitats.
- 4.26 Paragraph 29 notes that SINC's should be selected and designated according to clear and strict criteria to ensure that the sites are of substantive nature conservation value.

5. STATEMENTS OF COMMON GROUND

- 5.1 Statements of common ground were provided to the inquiry covering noise, air quality, hydrogeology and hydrology, and ecology¹.

Noise (CC19)

- 5.2 Noise level measurements were taken at four representative locations around the site. Average background noise levels at Winch Fawr Road and Harlech Drive (on the edge of the Castle Park Estate) were found to be 41 and 42dB_{LA90} respectively. At Beacon Heights and Bryn-y-Gwyddel House the levels were 50 and 51dB_{LA90}.
- 5.3 Maximum predicted noise levels at each of the locations were calculated for the main operational phases and for baffle mound construction. All were found to be below the target noise levels set in accordance with *MPG11*, paragraphs 34 and 42² (CC19, table following para 3.7). These are reflected in the agreed conditions. Hours of operation were also agreed (see paragraph 3.8 above).
- 5.4 It was further agreed that the proposed mitigation measures represented the “best practicable means” to control noise. On this basis it was concluded that the noise issue had been satisfactorily addressed and did not constitute a valid reason for refusal.

Air Quality (CC20)

Fugitive dust

- 5.5 The principal air quality issue arising from the excavation and restoration operations is the generation and control of dust. Dust would be generated during the active phases of

¹ These statements of common ground were agreed by WML and the Council. Notwithstanding this, several other parties raised issues regarding matters covered by the statements of common ground. A sharp issue also separated WML and the Council over the length of the aftercare period required to restore ecological features on the site.

² 55dB_{LAeq,1hr} for the operational phase, or 10dB above the measured background level (whichever is the lower); 70dB_{LAeq,1hr} for up to eight weeks at any dwelling during soil stripping and construction/removal of baffle mounds.

the development from soil stripping, digging and dumping of spoil, loading of dump trucks and re-dispersion by vehicle movements over loose surfaces. Particles would consist mainly of fragments of mudstone and shale, with relatively few coal and organic particles. Movement of materials during restoration could also generate dust.

- 5.6 The potential emission, dispersion and deposition of fugitive dust would be largely dependent on the weather conditions. Rainfall wets surfaces and prevents dust being lifted into suspension. Wind speed and turbulence determine the rate at which dust particles are lifted into suspension and how far they are carried before returning to the surface. Stronger winds will pick up and carry greater quantities of dust for longer distances, but will also dilute and disperse the dust in a greater volume of air, spreading it over a greater distance. The prevailing wind direction across the site is from the south-west and west. Communities to the north-east and east have the greatest potential for receiving fugitive dust.
- 5.7 The soil mound would be 256m west of the nearest properties in Castle Park and 380m from Beacon Heights. Nuisance dust could potentially have a very slight but measurable impact on these communities during the construction of the baffle mound, and during the period of the reclamation works between the baffle mound and the community. Measures to mitigate dust should therefore be taken when this work is in progress. During the main coaling phase the greater distance between the working area and the receptors would be likely to provide sufficient protection, since any dust raised would be expected to fall to ground inside the site boundary.
- 5.8 With appropriate mitigation, which could be required by condition, the [risk of] release of significant amounts of fugitive dust is considered to be minor.

Public exposure to particulate matter

- 5.9 A three-year study, led by Newcastle University considered whether PM₁₀ particulates from opencast coal mining impaired children's health. It found that children in opencast communities were exposed to small, though statistically significant, additional amounts of airborne particles measured as PM₁₀¹ and that GP consultations for respiratory, skin and eye conditions were a little higher. However, no link was found between living in opencast communities and asthma prevalence or severity. Also, the link between daily PM₁₀ levels and daily health outcomes was found to be similar in communities near and away from opencast sites.
- 5.10 The Committee on Medical Aspects of Air Pollutants (COMEAP) subsequently issued a statement, which includes the following text:

The Committee acknowledges that the short-term effects on children's respiratory health seen in this study are small. From what is known of the long-term effects of coal mining on the health of coal miners, it is most unlikely that opencast sites would have any long-term effects on the health of local communities. However, the Committee recommends that as a precautionary measure, the modifications to the planning process suggested by the authors be considered by the relevant planning authorities and be incorporated in minerals planning guidance.

¹ +2.1 µg/m³ (TEOM), or +14%

- 5.11 This recommendation was accepted by the DETR.
- 5.12 The Newcastle report contained a framework for the assessment of new opencast coal schemes. This includes a recommendation that, where opencast coal mining is to take place less than one kilometre from people's homes, information supplied with the planning application should include consideration of PM₁₀ levels. If the presence of a site is likely to cause breaches of the National Air Quality Standard, then the likelihood of health effects should be considered.
- 5.13 The assessment included in the Environmental Statement adopted this approach.
- 5.14 Ambient PM₁₀ concentrations were estimated for the edge of Castle Park (19.0µg/m³, gravimetric) and in central Merthyr Tydfil (26.6µg/m³, gravimetric) from measurements taken in South Wales in a study commissioned by the DETR and measurements made near opencast sites operated by Celtic Energy.
- 5.15 If it is assumed, on the basis of the Newcastle study, that the proposal would add, on average, 14% to these existing background PM₁₀ levels, then the annual mean at the edge of Castle Park and Beacon Heights might rise to 21.6µg/m³, gravimetric. In central Merthyr Tydfil it could rise to 30.3µg/m³, gravimetric. PM₁₀ concentrations within Castle Park and Beacon Heights would lie somewhere between the two extremes, but probably closer to the edge of community value.
- 5.16 All estimated means are lower than the 40µg/m³ Annual Mean Air Quality Standard for PM₁₀ set for 2004.
- 5.17 Also, in central Merthyr Tydfil a pessimistic estimate of the 90th percentile of daily PM₁₀ means would be 48.3µg/m³, gravimetric. Accordingly, the new Air Quality Objective, of no more than 35 daily exceedances (approximately the 90th percentile) of 50µg/m³, would also be met, even in central Merthyr Tydfil.
- 5.18 As a consequence it is agreed that it is highly unlikely that the proposal would cause breaches of the Air Quality Objective. In line with the COMEAP conclusions therefore, no consequent assessment of health issues is required.

Hydrogeology and Hydrology (CC21)

Hydrogeology

- 5.19 The existing hydrogeological characteristics of the strata underlying the appeal site have been considerably modified by the underground mineral workings. These act as preferential groundwater flow paths. There are ponds, wet areas and intermittent issues at and nearby the site, some of which emerge from adit mouths. These flows are sustained by shallow perched water tables, held above the floor of the patch workings. The flow from one adit mouth is used as a private water supply.
- 5.20 Water which infiltrates to greater depths finds its way into the extensive mineworkings which underlie the area. Eventually it joins the flooded Ynysfach minewater system some 2.5km to the east-south-east and 60m or more below the site level. This enters the River Taff via a number of routes.

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- 5.21 In the Cynon Valley, some 1.7km south-west of the site, a disused adit discharges a copious flow of minewater which originates from an extensive catchment. Two properties use this flow as a private drinking supply. Ironstone workings extend from the adit mouth to the Cynon-Taff watershed and underlie a small part of the site.
- 5.22 A small fraction of the strata to be excavated have the potential to cause acid rock drainage. However, there is no evidence to suggest that groundwater discharging from the site is other than good quality and no records of pollution which would indicate that acid rock drainage has developed within or beneath the area.
- 5.23 The site operations would be likely to cause a small net reduction in the amount of groundwater flowing from the site into the Ynysfach minewater system. This is regarded by the Environment Agency as a beneficial impact.
- 5.24 Within the excavation area, ponding would be avoided and rates of flow into old mineworkings would be minimised. Special arrangements would be made to deal with acid rock drainage conditions should they be encountered.
- 5.25 Detailed hydrogeological studies have predicted that the scheme would have minimal impact on the private water supplies to Ty'n-y-Coedcae Farm, Bryn Teg Farm, Dyllas Cottages and Drift Houses.

Hydrology

- 5.26 The site lies almost entirely within the catchment of the Nant Ffrwd, a tributary of the River Taff.
- 5.27 There are no permanent watercourses within the site. A number of intermittent flows follow ditches and small watercourses, with associated pools and soakaways. Several of these originate from old mine adits.
- 5.28 There are no licensed abstractions or consented discharges within the area that would potentially be affected by the scheme. However, several unlicensed abstractions occur in the neighbourhood.
- 5.29 Surface and groundwater from all operational areas would pass through water treatment ponds or lagoons. These would discharge to the Nant Ffrwd via a tributary stream. The quantity and quality of the water discharging to this stream would be controlled within the limits set by the Environment Agency. There would be some increase in run off. However, peak flows would be controlled by attenuation ponds and water would be held to allow suspended solids to settle out, assisted as necessary by approved flocculents.
- 5.30 On restoration, the final landform would be provided with a sympathetically designed network of ditches, streams and ponds. These would control and balance run off, whilst also providing diverse wildlife habitats. During the early stages of restoration, water treatment areas would remain functional. However, when vegetation is satisfactorily re-established, the need for water treatment would reduce. At that stage treatment lagoons and ponds would be developed into safe wildlife habitats.

- 5.31 Overall, the quantity of water flowing northward to the Nant Ffrwd would slightly increase by comparison with the existing regime. The receiving watercourse, including the culvert beneath the A465(T), would be able to accommodate this increase.

Ecology (CC22)

- 5.32 It is agreed that the ecological information before the inquiry is adequate to inform the biodiversity of the site.
- 5.33 It is further agreed that the long-term impacts of the scheme on the biodiversity of the site would be as set out in Section 8 of Mr Pryce's proof of evidence, provided that the necessary resources are provided for the duration of the scheme and a sufficiently long aftercare period. During this period a suitably qualified site ecologist should oversee and monitor the works and provide advice on habitat creation and the implementation and updating of a detailed management plan.

6. THE CASE FOR WALTERS MINING LTD

Introduction and Overview

- 6.1 Notwithstanding the amount of evidence and the legal and procedural submissions, the determination of this appeal will require the familiar planning exercise of weighing up all the material planning considerations and reaching a balanced decision. This was recognised by the Planning Manager in his report to Committee of 3 December 2001.
- 6.2 Environmental Impact Assessment is a separate procedure. It does not detract from or supersede the duty to determine the appeal "in accordance with the development plan unless material considerations indicate otherwise".
- 6.3 The licensing regime in respect of species protected under the Habitats Directive is also separate from the planning system. The decision maker in the planning sphere is entitled and, indeed, obliged to have regard to the licensing system, but no more. It is no part of the planning function to determine or predetermine any licence application. This is recognised by Circular 23/01, paragraph 2.
- 6.4 The balancing exercise required in this case is recognised in *PPW* as lying at the heart of the concept of sustainable development (*PPW*, paras 2.1.4 and 2.1.5). The planning system has a fundamental role in delivering sustainable development. The four "objectives" identified in *PPW* are to be pursued "at the same time". The nature of public inquiries is to facilitate the rigorous, and sometimes minute, examination of evidence, "zooming in" to consider fine details about ecology, landscape, planning policies etc. However, the decision maker must, at the end of the day, step back and examine the proposal through the "wide angled lens" framed by these four objectives. This was acknowledged by the Planning Manager. It was also acknowledged by Mr Powell in cross-examination, but was absent from the Committee's first reason for refusal, which complained that the proposal was "unsustainable", while citing only one strand of the guidance.

- 6.5 In fact, the appeal scheme would contribute to the achievement of all four objectives. By effecting land reclamation it would be taking a “key step in the regeneration process”, and achieving objectives of the Structure and Local Plans. The mitigation and restoration proposals would achieve not only effective protection, but also enhancement of the environment (particularly, but not exclusively, by virtue of enhancement of conditions for Great Crested Newts, the only European protected species known to inhabit the site). Extraction of coal and sandstone prior to reclamation for local consumption would constitute the prudent use of natural resources. The site would produce 11% of Welsh coal for 2 years (WML 34), thereby providing a strategic resource and helping to improve the UK’s balance of payments.
- 6.6 Finally, the direct and indirect jobs generated by the proposals would increase and widen employment and training opportunities in an area of above-average multiple deprivation.

The Development Plan

- 6.7 This is the statutory starting point. Deciding whether or not the appeal scheme is “in accordance with the development plan” requires the application of common sense. This is stressed in the case law¹. It is a strategic objective of both the Structure and Local Plans to seek the clearance of identified derelict sites within the respective plan periods to 2006. The plans include policy guidelines as to how such reclamation is to be carried out in practice. Ecological, cultural and residential amenity considerations are all flagged as relevant.
- 6.8 It is also to be noted that there is no development plan policy ban on the creation of new or replacement habitats; such an approach is quite acceptable, eg under Structure Plan Policy D6. These concerns need to be considered in the context of the policy in favour of land reclamation. The land reclamation policies are, in *Cummins* terms, “dominant” ones. No breach of these policies was alleged in the reasons for refusal, Rule 6 Statement or Mr Powell’s proof. Citation of the general “special interest” policies in reasons for refusal 2 and 3 was an example of the approach rejected as flawed in *Cummins* – “a legalistic straightjacket”.
- 6.9 In fact, some of the policies relied on by the Council are inapplicable, while most require judgments about the “acceptability” or “appropriateness” of impacts, as opposed to the bland approach of the reasons for refusal. The submission that the land reclamation policies are “dominant” ones is strengthened by the fact that Local Plan policy GR1 includes consideration against environmental criteria.
- 6.10 Local Plan policies GR1, GR2 and Chapter 8 of the Structure Plan are relevant because the appeal site is clearly identified in the Local Plan and its Proposals Map as “derelict land”. Paragraph 6.17 of the Local Plan explains that the phrase “development proposals” in GR1 means “the physical implementation of the engineering works necessary for the restoration scheme”. Paragraph 6.19 of the Local Plan notes that the list of sites was reviewed during plan preparations by means of a “comprehensive landscape survey”. The reclamation programme in policy GR2 “represents the latest

¹ R v Rochdale ex parte Milne, opening statement, para 2.8.5 and R v Camden LBC ex parte Cummins, paras 154-163 (WML 40).

recommendations from the Borough Council”. The UDP Issues Paper speaks of a possible further review, but its outcome is remote and unknown.

- 6.11 The definition of “derelict land” in both plans is not derived from statute. The fact that the Council now seek, in the context of this appeal, to disregard the Local Plan designation does not operate as an alteration of the plan. In fact, not only has the site been identified as “derelict” fairly recently by Council, but the ecological evidence reveals that, as wildlife habitat, it is deteriorating.
- 6.12 Of the 25 priority sites listed in Policy GR2, only 2 have been reclaimed. No source of finance to undertake a limited, non profit-based reclamation has been identified. The Council’s note on finance for SINC’s confirms this (MTCBC19). It is common ground that the WDA do not have the money to do the work (WML1, Appendix 1; WML23). The Council have not set aside money; and the landowners cannot be compelled to do it, short of CPO, which is not proposed.
- 6.13 Therefore the evidence is that the appeal scheme is the only means of achieving the development plan reclamation objectives for the site. The “Do Nothing” option, which was at some points advanced by Mr Powell, has no basis in policy and is directly contrary to the development plan. It would also be harmful to the ecology of the site because of deterioration, particularly of the newt ponds.
- 6.14 The alleged “breaches” of the environmental policies of the development plan, the Countryside Strategy (whose status is uncertain and, in any event, proceeds upon the assumption that the sites listed in policy GR2 are to be reclaimed), and of *MPPW* were justified by Mr Powell on the basis of his colleagues’ evidence. Other aspects of local plan development control policies are covered by the statements of common ground (CC19 to 22) and the agreed conditions. The evidence on those issues presented by local residents has not raised any matters outside the ambit of those statements of common ground, though WML have responded in writing to the written representations by Merthyr Tydfil Anti Opencast Campaign (WML 38).
- 6.15 The residents’ human rights would be protected by means of the agreed conditions. Even if they were not, First Protocol to Article 1 and Article 8 rights can be overridden in the public interest or in the interests of public safety or the economic well being of the country respectively.
- 6.16 Structure Plan policy MIN1 is specific to the extractive element of the appeal scheme and therefore in that regard, one of the “dominant” policies. It, too, presumes in favour of proposals where “acceptable” environmental and amenity mitigation and aftercare measures can be undertaken. The fifth criterion concerns benefits to the economy. Mr Richards’ evidence on economic benefits was unchallenged. It is only the environmental criterion which is in issue with the Council.

Ecological Effects

- 6.17 The evidence is greatly simplified by the Statement of Common Ground (CC22). The statement records that it is agreed:

1. that the surveys undertaken by Mr Pryce for WML are sufficient to determine the biodiversity interest of the site; and

2. that “it is likely that the long-term impacts of the scheme will be as shown in Section 8 of Richard Pryce’s proof of evidence” (subject to a number of provisos).

6.18 Section 8 of Mr Pryce’s proof is a detailed assessment of impacts in relation to each relevant habitat and species. The overall conclusion is that “our mitigation and restoration proposals are capable of returning the site to a level of biodiversity interest greater than that which it currently has” (WML3, para 8.1). This is borne out by the individual impact assessments.

6.19 Attention therefore focuses on the provisos. These are (CC22):

1. that the success of the scheme is underpinned by the commitment of the appellants to its long-term implementation; and
2. their provision of the necessary resources for the whole duration of the scheme, to include:
 - the provision, implementation and periodic updating of a detailed management plan;
 - the appointment of a suitably qualified ecologist to oversee the works and provide ecological advice for the whole period;
 - a “sufficiently long period” of post-restoration and habitat creation; and
 - the implementation of appropriate monitoring of the scheme.

6.20 In Dr Hill’s view, “a sufficiently long period” is 25 years. However, Mr Pryce considers a 10 year aftercare period to be sufficient. This would effectively provide for a 15 year care period in the Heritage Conservation Area.

6.21 The proposed conditions envisage three methods of control. Firstly, preparatory works, including the preparation of receptor habitats for Great Crested Newts and their collection and movement from the operational areas to the Heritage Conservation Area, would be secured by a Grampian condition. The Court of Appeal has now made it clear that beginning development without complying with such a condition is not valid¹. The financial investment involved in this first phase is considerable, regardless of whether a period of nine months or three months is required for trapping the newts (CC57). On this point, the two expert witnesses were divided (MTCBC18 and WML36). However, the work would require the grant of a licence under the Conservation (Natural Habitats &c.) Regulations 1994, so the issue would ultimately be determined by that route. Either way, the differential clearly would not threaten the viability of the scheme.

6.22 Secondly, the details of the preparatory and other works would be set out in a management plan, the provision of which would be secured by Grampian condition. The Council’s Countryside Officer, any retained ecologist and the relevant consultees,

¹ Henry Boot Homes Ltd. v. Bassetlaw DC. [2002] EWCA Civ.983

most notably CCW, would have the opportunity for involvement at this stage. The plan would include provision for the appointment of a suitably qualified ecologist(s) to oversee and monitor the works. It would also include provision for periodic updating in the light of monitoring.

- 6.23 Finally, the implementation of the management plan (and all other aspects of the project) would be secured by way of a bond. Again, this is an up-front commitment secured by Grampian condition. On either basis (10 or 25 years), the bond would represent a significant potential liability. However, if the National Assembly were to decide that 25 years is appropriate, the extra cost would not be so great as to break the scheme.
- 6.24 The issue of the length of the aftercare period is one of professional judgment. The Council's UDP Issues Paper mentions "up to 10 years" (CC38, para 6.10). The relevant section of the ES for Ffos-y-Fran, drafted by Mr Hill's company RPS, suggests 5 years for an opencast project on cSINC land. The Council say that each site must be treated on an individual basis and this is obviously right. However, Mr Hill's judgment is based upon a review of Mr Pryce's surveys – a paper exercise. He stated that he had spent 3½ hours on the site, as against Mr Pryce's 100 to 150 days. Mr Pryce is a specialist in habitat creation and opencast sites; he has sought further advice on these matters from Dr Neil Humphries. He is "the" expert in the field and his inputs could continue.
- 6.25 Dr Hill relied on literature to support his judgment. He had not visited any of the sites referred to as examples by Mr Pryce (particularly Nant Helen, which had been restored for 4 to 5 years) or indeed any comparable example. The literature focuses on 1980's/early 1990's schemes of restoration to good quality agriculture or leisure ("quick greening"), which are simply not what WML propose. In fact, full consideration of this material supports Mr Pryce. Some of the authors also noted the dearth of scientific knowledge of succession in such developing habitats. In this regard, the scheme would offer the opportunity to enhance this knowledge, by recording/monitoring – Mr Pryce envisages a graduate ecologist being permanently on site under the supervision and guidance of a senior colleague who would carry out the parts of the project requiring such experience. Ecological education is a local BAP objective and the project could contribute to addressing the "taxonomic impediment".
- 6.26 Mr Pryce was cross-examined at length on risk. A detailed list of possible difficulties were put to him. His answers were impressive: simple, but reasoned and rooted in his lengthy experience. His evidence should be treated as genuinely expert, not just in ecology generally, but in the specific subject of restoring these types of habitats. In answer to the Inspector, he agreed that whilst there was an element of "luck" in these matters, his experience told him that, with tight control and attention to detail, risks would be minimised. With regard to Great Crested Newts, the only European protected species known to inhabit the site, he advised that their habitat could be increased, enhanced and secured for the future. Dr Hill volunteered that newt translocation was "relatively straightforward". In any event, the Council's case as put in cross-examination must be seen in the light of Mr Hill's concession in the Statement of Common Ground. The only issues are the adequacy of controls and the aftercare period. Mr Richards was not challenged on WML's record as a mining operator, or their experience of dealing with Newts.

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- 6.27 The farmer's co-operation during the life of the scheme would be underpinned by a strong economic incentive to ensure that operations continue unhindered by planning enforcement. For the duration, his income from the land would be from mining rather than farming. At the end, grants might be available to assist him to farm in an ecologically friendly way. There is also a real prospect, because of the newt enhancement, of the site being of SSSI quality. In the event of designation, CCW would have a range of statutory powers to achieve management by grant-aided co-operation or, failing that, enforcement.
- 6.28 In fact, preservation and enhancement of Great Crested Newt habitat is an important benefit of the proposals. Mr Pryce's evidence that the existing ponds, created by chance after opencast operations, are deteriorating was unchallenged, as was his proposal to create new ponds which would, at the end of the period, be a "more robust" habitat with greater holding capacity. Thus, even if there were no management scheme at that stage, the newts would have been provided with the infrastructure to survive. In the "Do Nothing" option, their habitats will continue to deteriorate and disappear.
- 6.29 The Habitats Regulations require the National Assembly to "have regard" to the requirements of the Directive so far as they may be affected by the exercise of, amongst other matters, their planning functions (Regulation 3(4)). These benefits for newts must, therefore, be taken into account. They are a powerful material consideration in favour of the proposals. The Assembly must also "have regard" to the licensing regime. This is contained in Regulations 44 to 46. The Regulations are the relevant legislation, not *PPW*, Circular 23/01 or *MTANI*.
- 6.30 Regulation 44(1) disapples criminal sanctions in the case of anything done "for any of the following purposes" and under licence. The purposes include "conserving wild animals or wild plants or introducing them to particular areas" (Reg 44(2)(c)). They also include "preserving health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment" (Reg 44(2)(e)). Sub-para (3) then prescribes the matters on which the National Assembly is to satisfy itself. *PPW* (para 5.5.12), Circular 23/01 (para 4) and *MTANI* (para 60) elide purpose (2)(e) with sub-para (3) and subtly oversimplify the statement of the law. No doubt, in the vast majority of planning projects, purpose (e) is the only candidate, but in this case purpose (c) is also relevant. *PPW* explains the rationale for the policy of having regard at planning stage – to avoid unimplementable planning permissions, but nothing in the guidance requires certainty as to the outcome of a licence application at this stage, nor could it. However, purposes (c) and (e) are clearly likely to be met in this case, on the totality of the evidence, as are the requirements of sub-para (3). In this case, the proposals would bring an unchallenged range of socio-economic benefits to a deprived area.
- 6.31 In cross-examination Mr Jenkins agreed that the creation of employment land is a "priority" for Merthyr Tydfil. The nearby Trago Mills development was licensed. That scheme is for retail/leisure, not B Class uses. But what matters is the creation, provision and maintenance of jobs. It is accepted that the appeal scheme would do this, directly and indirectly, in addition to providing training for 10 apprentices. Mr Malloy is a good example of the potential of such training – he has spent his life working in opencast, making a living for himself and his family. This contribution, together with the
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contribution of the coal to Welsh and UK GDP, is an important part of achieving one of the four sustainability objectives of *PPW*. The site is, currently, peppered with uncapped adits, crown holes etc. The residents speak of “informal” access. This is an inherently dangerous situation, especially for unsupervised children. The proposals would address it, filling such areas and re-using many for wildlife purposes. The beneficial effects for Great Crested Newts are also a “beneficial consequence of primary importance for the environment”.

- 6.32 It is essential to set the ecological evidence in context (see para 6.4 above). The site is a cSINC, in common with approximately 40% of the County Borough (excluding the Brecon Beacons National Park). Of the remainder, 30% is already developed, and 10% is a SLA. The cSINCs have not been subjected to any planning scrutiny or analysis to determine the role that they should play in the context of planning for Merthyr Tydfil overall. *PPW* (paras 5.3.2 and 5.3.11) advises that such local designations should not “unduly restrict acceptable development”. The environmental and natural heritage policies of the structure and local plans reflect a proper hierarchical approach. They do not oppose habitat recreation – it is countenanced in the case of “Lower Order” designations.
- 6.33 Furthermore, the site is allocated for land reclamation in the Local Plan, involving “recontouring” (CC34, para 6.18). This was the subject of review and consultation in the mid/late 1990s and CCW did not object (nor did anyone). The West Merthyr application shows that CCW are ready to defend cSINCs when they think it appropriate (WML 35). CCW are aware of the inquiry, and their ecological officer attended it, but they have not objected (G1, Day 1; MTCBC2, para 5.3.1). There is no evidence of an intention by WML not to undertake the scheme themselves. The evidence is that a sensitive, high quality restoration can be achieved by the relevant experts working with WML, secured by appropriate planning controls.

Landscape

- 6.34 The Council’s case has been confined to historic, rather than “pure” landscape objections, and the policies cited in the reasons for refusal must be interpreted in this way.
- 6.35 Before the planning application was made and continuing right up to the inquiry, the appeal site has been subjected to detailed study by archaeologists/historic landscape experts (WML5, Section 2). The impacts of the proposals have been specifically considered by Mr Lawler, Mr Roberts, Mr Marvell, Cadw, CCW and GGAT (Curatorial Division). The individuals concerned are highly skilled and specialised and at the forefront of the developing discipline of historic landscape study in Wales. All agree that the proposals are acceptable. The most recent Cadw letter (WML5, Appendix 11) assumes the worst in the case of the area to be covered by the overburden mound, but still raises no objection. CCW have recently confirmed that they are happy with the mitigation strategy. Again, all these bodies are quite capable of raising strenuous objection when they see fit, as demonstrated at West Merthyr (WML 35). Against this united chorus of opinion, Mr Whittaker rings out as a lone voice.
- 6.36 The basis of his disagreement is that he considers the Lawler report (CC3) to be flawed in its dating of the remains which would lie under the overburden mound. However, his evidence is based on a paper exercise; he has conducted no survey at all, let alone the

topographical survey that he alleges Lawler should have done. There is a basic inconsistency in his evidence in this regard. He purports to reach judgments about harm, yet claims that this is impossible without survey.

- 6.37 He also criticised the Lawler phasing analysis on the basis that “it is almost entirely based on OS maps that were not first surveyed until 1868”. He repeated under cross-examination that the “earliest plan was 1886”. As he had to admit, this assertion was wrong. He then changed tack and said that he had realised (as is evident from Lawler p.12) that earlier maps were consulted and what he meant to say was that they were unreliable. This, however, he was not qualified to judge, since he had not looked at the earlier maps himself. The maps, when examined, bore out Lawler’s approach, which is also fully explained in the report. A fair reading of Lawler’s work reveals it to be a well-researched, balanced study. The same cannot be said of Mr Whittaker’s criticisms.
- 6.38 More importantly, his criticisms are simply irrelevant to the classification/evaluation of historic landscape as it has evolved in Wales from the Register (CC51) through LANDMAP (CC40) up to the Guide to Good Practice (CC53, Sections 4 and 5). This is based upon the process of characterisation, which uses key elements, or “dominant patterns”, identifiable in the landscape.
- 6.39 As to individual remains in their own right, Cadw assessed the site in 2000 and scheduled part of the Heritage Conservation Area. The Scheduled Ancient Monument would be unaffected by the proposals. Areas of lesser importance would be preserved by record (offering the chance, in the 1950s/60s opencast areas to study any remains that were ignored at that time) and a full record would be made of the historical area beneath the proposed overburden mound, before it is covered. This is an appropriate response in the light of the guidance in Circular 60/96, given the relative importance of the remains as assessed by Cadw. The Phase 1 tips at the north of the site in the Heritage Conservation Area would be preserved, and would continue to stand as a monument to Merthyr Tydfil’s past on the Heads of the Valleys Road.
- 6.40 The proposals have also recently been assessed following the National Assembly’s newly adopted ASIDOHL methodology (WML15). Their effect was judged as “moderate”. The methodology does not take account of benefits. Mr Whittaker’s criticism of it is essentially related to the Lawler report.
- 6.41 The Register does not advocate setting the landscape in aspic – it recognises that landscapes are dynamic, evolving systems. They should not be “unworkable ... stuck in the past” (CC51, pp xxix and xxxi). The Merthyr Tydfil area, unlike Blaenafon, has not been recognised by international designation. Extractive remains associated with the Cyfarthfa Works characterise a number of Historic Character Areas around Merthyr Tydfil. In addition, there are remains related to the other works (WML14, pp 34-35). As with ecology, it is important to set the issue in context. Entry on the Register is not intended to prevent change, merely to ensure that it takes place in a way which pays regard to the historic landscape. Any other approach would stagnate the entire area.
- 6.42 At Winch Fawr West, mitigation is proposed; there would also be educational benefits and opportunities for the specialists, amateurs and schoolchildren through preservation by record and managed access. The site is included on the Provisional Map of Open Access Land under Countryside and Rights of Way Act 2000, but objections have been made; the outcome of the process is not known. The legislation is as yet untested.
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6.43 Mr Whittaker's criticisms of ponds and the drainage feature in the restoration strategy were misplaced. There are likely to be around 50 ponds, utilising existing depressions in the land, adits or crown holes. They would be of very limited visual impact. The 1825 OS surveyor's drawing shows a stream running from south to north across the site and, as all agreed, water was an integral part of the early extractive process. Therefore, the proposed feature cannot fairly be described as "alien".

Environmental Impact

6.44 The National Assembly are required, in determining the appeal, to take into account the "environmental information" and state in their decision that they have done so¹.

6.45 In *R v Cornwall CC ex parte Hardy*, Harrison J accepted that it was for the decision maker to judge the adequacy of the environmental information, subject only to judicial review on Wednesbury grounds (WML41, para 56).

6.46 It is accepted that the original ES was not adequate in that it did not fully meet the requirements of Schedule 4 to the Regulations. Further information was provided to the Council in 2000. They decided, under protest from the then Countryside Officer, that the ES was adequate.

6.47 Following refusal, the appeal was lodged in August 2002. Following consideration of, amongst other matters, the ES, the National Assembly requested further information for the purposes of the inquiry, pursuant to Reg 19(1). In these circumstances, the publicity requirements are disapplied. The Assembly wrote again on 20 June 2003 requesting non-technical summaries and spare copies of the information. They did not contact WML again. All this material (CC23) is part of the "environmental information".

6.48 Over the summer, Mr Pryce undertook various updating surveys which have been presented to the inquiry. These have not formed part of the environmental information: nor do they need to.

6.49 Dr Hill (instructed in September/October 2003 but not provided with CC23 until November) formed his own view as to the adequacy of information at that date. But he is not the Local Planning Authority and, in any event as of August 2002, the National Assembly became seized of the appeal. The Local Planning Authority had discharged its functions in February 2002.

6.50 In the event that the Inspector and/or the National Assembly have concerns about the adequacy of the environmental information following the February 2003 request, it remains open to the Assembly, up until determination, to serve a further Reg.19(1) request and re-open the inquiry.

Conclusion

6.51 The proposals constitute the only opportunity to achieve the site specific objective of the Local Plan of reclamation. The project has evolved, in response to the greater

¹ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, Regulation 3(2).

understanding which has emerged since the site was first promoted for reclamation as a joint venture with the Council. It now constitutes a modern scheme, with the opportunity to become an exemplar of environmentally aware reclamation. In particular, it would achieve the continued presence of Great Crested Newt, securing its habitat for the future, in furtherance of Wales' international obligations under the Habitats Directive. It would also achieve a range of socio-economic benefits. The Planning Manager recognised this. The appeal should be allowed.

7. THE CASE PUT BY MR MALLOY

- 7.1 Over the last 10 to 15 years the opencast industry has not only been aware of its legal responsibilities, but also its social responsibilities. There are many examples of opencast mining schemes successfully working close to communities. At East Merthyr around 10,000 to 12,000 people lived near the site which was operational for 3 years. Some lived less than 100m from where the coal was being worked. A hospital was within 1km of the site and there were high-tech and food industries virtually next door. The site liaison committee provided a forum for local people to air their concerns with those working the site and complaints were few and far between.
- 7.2 The scheme successfully moved and safely disposed of the contents of the "Great White Tip". The ground was stabilised and parkland created along with a network of paths and picnic areas. 1 million tonnes of Welsh Dry Steam coal was produced. This was largely used at Aberthaw power station, which was specifically designed to burn this type of coal.
- 7.3 Opencast coal has brought investment to Merthyr Tydfil. Without it the town would still have more areas of dereliction. The industry has created development areas. New roads have been built and an industrial estate and executive houses have been built on reclaimed land. The environment in the communities surrounding the East Merthyr Reclamation Scheme has been vastly improved. All this has been achieved at no cost to the taxpayer.
- 7.4 Many opencast companies have won awards for their restoration work. Modern mining methods and environmental controls mean that noise, dust and fumes and water quality are well regulated. Most of the concerns about noise and dust are unfounded. It is in everyone's interest to see that dust is controlled. Employers do not want the work stopped and employees do not want to work in a dusty environment. Inspections are carried out by Council Officers, the Health and Safety Executive and in-house safety staff. Studies on dust, including that undertaken by Newcastle University, have failed to find any substantial link between opencast operations and health.
- 7.5 The UK needs an indigenous energy supply. Renewable energy resources, such as wind power, although clean, create a lasting visual impact on the landscape. Even if they were to become a larger contributor, conventional generators such as coal will always be needed to handle the peak demand for power.
- 7.6 The proposal would provide jobs for young local people and other local people who previously worked in opencast but now have to work a long way from home to earn a living.
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- 7.7 The landscape at Winch Fawr has been scarred by mineral extraction. There is plenty of evidence of old shafts and adits, collapsed roadways, steep exposed faces and crown holes. The land has been painted by nature with a thin veneer of green, but the dangers still remain. A reclamation scheme would remove the massive unseen voids close to the surface and stabilise the ground. It would remove the need to drill and grout, which can pollute water courses and the environment. It would remove the risks of subsidence and make the area safer.
- 7.8 The land is scheduled as derelict land in the Local Plan, for reclamation in the plan period. If it is not reclaimed by 2006, then one of the aims of the Local Plan will not have been met. Should nothing be done, the area will remain unsafe and a valuable coal resource would be sterilised. Alternatively, should surface reclamation take place, then the same damage to wildlife would occur as would be the case with the appeal scheme. Moreover, the coal would not provide the money for the restoration and the taxpayer would have to foot the bill. Taxpayers' money would be better used to buy equipment for local hospitals and training for young people.
- 7.9 The western gateway to Merthyr Tydfil is along the A465(T). It is a desert of industrial waste tips as far as the eye can see. Merthyr Tydfil is on the edge of the Brecon Beacons National Park, yet it is the least visited place by overseas visitors in Wales. If the dereliction were cleared up it would encourage people to stop. The long-term benefits of cleaning up the area would vastly outweigh the minor inconvenience of the works.
- 7.10 Overall the scheme offers a real opportunity to benefit the environment and the community. Accordingly, it should be approved.

8. THE CASE FOR THE MERTHYR TYDFIL CBC

The Issues

- 8.1 The issues for determination in this appeal are:
1. **Is it open to the National Assembly to grant permission?** In particular, is the "Environmental Information" adequate for the purposes of the Town and Country Planning Act (Environmental Impact Assessment) (England and Wales) Regulations 1999? And, if not, are the deficiencies remediable?
 2. **Ought planning permission to be granted on the merits of the appeal proposal?** having particular regard to:
 - a) whether the reclamation proposals are appropriate in their nature and scale;
 - b) whether the proposal would have an unacceptable effect on the ecology and biodiversity interest of the site;
 - c) whether the proposal would have an unacceptable effect on the historic landscape;

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- d) whether the proposal is in accordance with the principles of sustainable development;
 - e) whether there is a need for the proposals, and the extent of any such need;
 - f) the relevance of other sites being, or which may be, promoted for development in the area;
 - g) whether the proposal, insofar as it affects a protected species, would meet the three tests in Regulation 44 of the Habitats Regulations 1994, and in particular that of “Imperative Reasons of Overriding Public Interest”; and
 - h) taking the above matters into consideration:
 - whether the proposal is in accordance with the development plan; and
 - whether there are material considerations which indicate that the decision should be made other than in accordance with the development plan.

The Adequacy of the Environmental Information

Regulations and the Law

8.2 The EIA process is no mere technicality. It is a requirement of law, and performs a vital role. That role was set out by the House of Lords in *Berkeley v Secretary of State for the Environment and Others* (MTCBC21). Here Lord Hoffman noted that the purpose of the European Council Directive 85/337/EEC was to ensure not only that planning decisions which may affect the environment are made on the basis of full information,

...but that it should have been obtained by means of a particular procedure, namely that of an EIA. And an essential element in this procedure is that what the Regulations call the “environmental statement” by the developer should have been “made available to the public” and that the public should have been “given the opportunity to express an opinion” in accordance with article 6.2 of the Directive. As Advocate-General Elmer said in *Commission of the European Communities v Federal Republic of Germany*...

“It must be emphasised that the provisions of the Directive are essentially of a procedural nature. By the inclusion of information on the environment in the consent procedure it is ensured that the environmental impact of the project shall be included in the public debate and that the decision as to whether consent is to be given shall be adopted on an appropriate basis.”

The directly enforceable right of the citizen which is accorded by the Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues. ...

A court is not therefore entitled retrospectively to dispense with the requirement of an EIA on the ground that the outcome would have been the same or that the local planning authority or Secretary of State had all the information necessary to enable them to reach a proper decision on the environmental issues.

- 8.3 The House of Lords further found that conducting a “paper chase” – referring to, for example, the Council’s planning officer’s report or proofs of evidence made available at the inquiry containing the relevant environmental information – could not act as an alternative to an adequate environmental statement. In this regard, the judgement noted:

I do not accept that this paper chase can be treated as the equivalent of an environmental statement. In the first place, I do not think it complies with the terms of the Directive. The point about the environmental statement contemplated by the Directive is that it constitutes a single and accessible compilation, produced by the applicant at the very start of the application process, of the relevant environmental information and the summary in non-technical language.

- 8.4 A further helpful summary of the principles of law which have been established in relation to the adequacy of an EIA are set out in the judgment of Mr Justice Newman in *Burkett (R on the application of) v Hammersmith and Fulham London Borough Council* (MTCBC22)

- 8.5 The environmental statement (taken with any further information) must be adequate before it can be considered to be an environmental statement at all. Whether it was adequate is a matter for the National Assembly to assess. However, it must fulfil the requirements of Schedule 4 of the 1999 Regulations. Regulation 2(1) provides that it must include such of the information in Part I of the Schedule as is:

.....reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile.

- 8.6 But it must also include at least the information referred to in Part II of the Schedule. It is legitimate to have regard to further information supplied pursuant to regulation 19 in this context - but not so far as a proof of evidence, or the appeal questionnaire, or even consultees’ responses. Although the latter forms part of the environmental information which must be taken into account by the decision-maker, such responses are no substitute for the information which the developer itself is required to provide.

- 8.7 No gloss needs to be put on those words or on the requirements set out in the Schedule. However, information purporting to fulfil the requirements of Part II does not in fact do so insofar as it consists of misleading information, submitted with the intention of distorting and suppressing the knowledge and conclusions available to an applicant in its own ecological reports. An applicant who submits such information cannot be said to have fulfilled the duty to provide such information as is “reasonably required... having regard..... to current knowledge.”

The present case

- 8.8 At the inquiry, no witness was prepared to defend the original Environmental Statement as being adequate, and it is understood that it forms no part of WML’s case to suggest

that it was so adequate. Accordingly, attention needs to be focused on the subsequent further information provided by WML pursuant to regulation 19.

8.9 From the ecological perspective, that information consisted of Documents CC4, CC5 and CC6. Document CC4 is an indicative strategy for the relocation of Great Crested Newts; CC6 is the restoration strategy. CC5 comprises a “Review of the Ecological Value of the land encompassed by the scheme, having particular regard to the opportunities for Restoration” (the “Review of Ecological Value”). It is this document that needs to satisfy the requirement that there be:

1. a description of the aspects of the environment likely to be significantly affected by the development including, in particular, fauna and flora, and their inter-relationship with the soil, water and archaeological heritage and landscape (insofar as could reasonably be required);
2. a description of the likely significant effects of the development on the environment resulting from the development, including short, medium and long term, direct and indirect effects (insofar as could reasonably be required); and
3. the data required to identify and assess the main effects which the development is likely to have on the environment (an absolute requirement of Part II).

8.10 It is now apparent – owing solely to the alertness of Dr Hill in requesting disclosure and analysing the content of the Pryce Ecological Survey Report 1999 (MTCBC2 Appendices 3 and 4), that the Review of Ecological Value manifestly failed to provide that information. At the inquiry Mr Pryce accepted that this review:

1. was based solely on the 1999 report, unsupported by further surveys;
2. appeared to have been an attempt to play down the ecological significance of the site and preserve the initial (and inadequate) conclusion of the ES that the site was of limited ecological significance only;
3. omitted matters of significance; and
4. was unprofessional and misleading.

8.11 At no stage during the entire process of the consideration of the planning application, submission to consultees, or preparation of evidence for this inquiry, did WML acknowledge the above, until those answers were elicited in cross-examination. They were not hard won concessions: they were openly and easily given (albeit after an initial, but then retracted, attempt to describe the report as a “*précis*”). The ease with which the concession was obtained only begs the further question: why was the inadequacy of this information not acknowledged beforehand?

8.12 It was on the basis of this information that the National Assembly requested further information in February 2003. However, the scope of the Assembly’s request was inevitably influenced by material before them, which they did not know was actively misleading. Accordingly, the extent of the further information requested was limited to that which concerned specific features of the ecological information only (see requests

and answers D and E). The further information supplied did not (as it understandably had not been asked) re-assess the ecological significance of the site taken as a whole, the effect of the disruption upon it, and the efficacy of the mitigation strategies to address the significant adverse effects.

- 8.13 Accordingly, the provision of the further information in May 2003 did not cure the inadequacy of the ES.
- 8.14 It was in fact only after May 2003 that further surveys and studies were conducted (CC13 to CC18). It was accordingly only as at December 2003 that it could be said that the ecological significance and biodiversity interest of the site had been adequately surveyed. Any assessment of impacts (taking account of mitigation strategies) can inevitably only follow on from such information. That is why Mr Pryce presented such an analysis in his proof of evidence (WML3, Section 8). As he accepted, no such assessment had been conducted previously.
- 8.15 The Environmental Statement and further information cannot be said to have been adequate. They did not contain the information required by either Part I or Part II of Schedule 4 of the regulations. The public and the consultees did not have the procedural right afforded to them to respond to that information. Accordingly, the grant of planning permission would be unlawful, pursuant to regulation 3.

Can the ES be remedied?

- 8.16 It is too late for WML to rely on the further studies and impact assessment as fulfilling the requirements of the 1999 regulations, for the reasons explained in *Berkeley* by Lord Hoffmann: it would undermine the purposes of the Directive to allow the piecemeal preparation of reports to be adopted as the ES by the regulation 19 route after the inquiry has concluded. The purpose of the Directive is to allow full information to be considered at the outset of the application process. To allow a misleading and inadequate ES to be buttressed in such a way would be directly to undermine the purpose of the Directive. The onus was at all times upon WML to provide sufficient information. That they failed to do so, by resorting to the provision of misleading information, is entirely due to them.

The Merits of the Proposal

The reclamation proposals

- 8.17 Reclamation can take many forms. This is acknowledged by both the Structure Plan and the Local Plan. It is also acknowledged by the WDA. The development plan supports the principle of appropriate reclamation. It does not extend beyond that which is required (Local Plan policy GR1; Structure Plan, policy D1 and supporting text). The reason is clear: the more extensive the works, the more capacity there is for disruption or damage to interests of acknowledged importance.
- 8.18 What is required or is appropriate for a site depends on the condition and nature of the site. The Structure Plan expressly recognises there are degrees of dereliction (paras 8.8.1 - 8.8.3). For sites characterised as consisting chiefly of valley sides, high ground, hill tops and moorland, methods of treatment in such locations may be limited to

schemes where the engineering treatment is minimal, or where the quality of natural colonisation of the site requires little or no treatment.

- 8.19 Those remarks could almost have been written with the appeal site in mind. They were not, of course, as at the time (and by the time of the adoption of the Local Plan in 1999), the significance of the site in ecological and historical terms had not been acknowledged. The site has, however, now been identified as precisely the sort of site that the Structure Plan had in mind when it made those observations.
- 8.20 That conclusion is not just that of the Council. It appears that the WDA consider the site to be one of very low priority, largely due to the “natural colonisation” of the site (WML1, Appendix 1). These words echo precisely those in paragraph 8.8.3 of the Structure Plan. The same attitude is also reflected at paragraph 6.20 of the Local Plan, which notes “...the WDA considers that not all derelict land warrants treatment and is of the opinion that areas may also be cleared by alternative operations or by low cost options”. The plan goes on to explain that the WDA considers in national policy terms that “the main areas” of dereliction should be treated by the year 2000. That may be so, but there is nothing to indicate that the WDA consider the appeal site to be “a main area”. Indeed, there is every reason to suppose that the site is viewed as a low priority area in the terms envisaged by the Structure Plan.
- 8.21 The Local Plan’s identification of the appeal site as derelict land and as suitable for (a) reclamation; (b) recontouring; and (c) a golf course, must be read in the above context. The Local Plan makes no acknowledgement of the landscape of either area in ecological and historical terms. Indeed, policy GR2 identifies area DL4 as a priority area for such works (despite the lack of evidence that the WDA assess it as being such). However, this area contains the most sensitive parts of the site, as well as that which is the flattest part of the site (the site for the proposed overburden mound) and the least in need of recontouring. The inference is that those spoil mounds that are now acknowledged as of national and local historic importance were viewed at the time as a priority for reclamation, in the form of recontouring.
- 8.22 Times have changed. WML have, either explicitly or implicitly, acknowledged that no part of the site is suitable for use as a golf course, and that the spoil mounds in the north and east of the site are not suitable for recontouring or anything but minimal reclamation works. Insofar as damage is inflicted to what is there, they propose elaborate and costly measures aimed at restoring those features of importance.
- 8.23 At no stage, however, was the principle of the “mining-led” reclamation challenged by WML in the design of the proposed reclamation. That is not surprising: they are a mining company. Nor is it surprising that no alternative plans have come forward as the landowner is hoping to benefit from a contract with WML. However, notwithstanding that, there is now clear evidence from both an ecological and a historic landscape point of view that only very minor works are desirable.
- 8.24 Both the Structure Plan (para 8.2.2) and the Local Plan (para 6.17) proceed on the basis that derelict land is defined as “land so damaged by past industrial or other development that it is incapable of beneficial use without treatment”. That is the definition also relied upon by Mr Jenkins in his proof of evidence at paragraph 3.1. No case has been put forward to suggest that the scale of the reclamation works is justified on the basis that the land is to be classified as “neglected or unsightly”.
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- 8.25 Classification of the land as “derelict” on the basis of that definition is at the heart of WML’s case (WML10, paras 3.1, 4.10 and 6.1.1). In the light of developments since the adoption of the Local Plan, however, that conclusion is now undermined. The site is certainly capable of beneficial use without treatment - whether the use is defined as a “nature conservation” use (and there is no reason why it should not be), or whether the use is defined as “grazing”, which may be said to be a beneficial use to nature conservation (even if the agricultural use in and of itself is of limited benefit). The argument that better management would be more beneficial to the end-use of nature conservation is nothing to the point. The test is whether the site is capable of beneficial use without treatment. On that definition, and attaching all due significance to the ecological interest of the site which has resulted from natural colonisation, the site may not even be said to be derelict.
- 8.26 Nothing could be a better illustration of the distance that has been travelled in the characterisation of the site since the production of the Local Plan than the fact that its very designation as “derelict” may realistically be said to be in doubt. That fact alone amounts to a material consideration of such weight that even if the proposal may be said to be prima facie in accordance with the development plan (which is not accepted - see below), the appeal may be determined otherwise than in accordance with the development plan.

Ecology and biodiversity

- 8.27 WML have (now) made strenuous efforts to provide evidence that the proposals would have an acceptable and even beneficial effect on the ecology and biodiversity interest of the site. For the strategy to have any likelihood of success, sufficient resources and commitment would have to be applied over a sufficient period of time. Even given those factors, the plan is not without risk: it cannot be said with certainty that the scheme would succeed in restoring the site to one of at least equal value to that which is currently there. Such a result is very hard to achieve, and would take considerable time. The inherent difficulties in recreating similar soil and hydrogeological conditions which are capable of supporting communities of recognised importance such as the existing purple moor-grass and rush pastures (requiring water-logged soil) and dry heathland (requiring dry land and thin soils) in an appropriate balance to each other, and woven into intricate mosaics are formidable. The suggestion that scattering turves and leaving the matter to nature would be adequate flies in the face of the JNCC policy on translocation and the particular inherent difficulties involved in habitat translocation (MTCBC2, para 7.3.2).
- 8.28 If the conditions precedent contained in the statement of common ground are removed, then it may no longer be said that the scheme is likely to succeed. Financial commitment on behalf of WML (or whoever implements a permission) may be assured by the provision of a bond, on the agreed basis. However:

1. WML offer to provide aftercare of only 10 years post restoration. There is no adequate evidence that that is sufficient. The literature on the subject speaks in terms of decades being required rather than the 5 or 10 year conditions ordinarily imposed by local authorities (MTCBC9, p40). Dr Hill assesses the required aftercare period as being 25 years.

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2. WML's witnesses placed great emphasis on the company's personal commitment and track record. Such a claimed commitment is undermined by WML's treatment of the EIA process, but in any event is irrelevant. There is no guarantee as to who will develop the site. Even if it is probable that the developer would be WML, that is not a material planning consideration, unless the planning permission is to be personal to WML, which is not proposed. Moreover, the landowner cannot be tied into the required commitment, whatever the commitment of the developer.
 3. Even if the scheme were successful, there is no adequate evidence to suggest that the site would be maintained in an appropriate fashion. Mr Pryce specifically accepted in answer to questions from the Inspector that at the end of the maintenance period, matters would be "back to square one", in the hands of the vagaries of the farmer. The evidence relied upon by Mr Pryce as to the availability of grant support for ecological management of the site is a factor of some weight; but there is nothing to suggest that such measures could not be taken now, even if the scheme were to be refused permission.
 4. It is precisely because of these risks and vagaries that the literature emphatically reinforces the principle that habitat creation is not a substitute for conservation, and is not to be used to justify development or used as an excuse for habitat loss (MTCBC9, p.1; MTCBC8, p.9; and MTCBC7 Ch11). The subtlety, complexity and biodiversity of an ecosystem which has evolved over time as a unique response to its historical and archaeological environment can rarely be achieved in practice – whatever the theory.
 5. That subtlety and complexity cannot be assessed by a simple walk over of a site such as Nant Helen, as WML seek to suggest. At 3.5ha that restoration project was considerably smaller than that proposed at Winch Fawr. There remains no adequate analysis of the success of the restoration of any comparable site. The evidence of success provided by WML and relied on at this inquiry is anecdotal at best, and uninformed by adequate data.
- 8.29 WML acknowledge the site is of SINC quality, but point to other cSINCs in the area too. It is true that much of the undeveloped County Borough is a candidate for that status. That does not lift the responsibility under the CROW Act 2000 and the Wildlife and Countryside Act 1981 to protect species and habitats of acknowledged importance, and to weigh the case for their protection against the identified need for the development in each individual case. Moreover, that argument takes no account of the specific characteristics of this particular cSINC, assessed in its citation as being one of the most significant areas of upland/semi-upland moorland and fridd habitats in the County Borough, nor of it hosting an "extremely diverse series of habitats supporting many species of interest" (MTCB2, Appendix 1).
- 8.30 Taking all those matters into account, it must be concluded that there is significant doubt as to whether the restoration scheme will succeed. Given the high quality of the existing environment, which is accepted to be worthy of SINC status, the risk must be judged to be unacceptable. It cannot be said that the merits of the proposal "clearly
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outweigh” the value of protecting the [existing] countryside for its own sake. Planning permission may be refused on this ground alone (see also *MTAN 1*).

Historic Landscape

- 8.31 The alternative scheme produced by WML at the outset of the second week of the inquiry is now withdrawn and not relied upon. That decision was taken on their own advice and at their own option. The Council’s view was that the amendment could not be proposed (as a matter of law) without environmental assessment. But that would have been a matter for the National Assembly to determine, had the new scheme been pursued. The reasons for the withdrawal remain confidential to WML.
- 8.32 The alternative scheme might have been preferable to the existing scheme. The Council does not know without assessing it formally. Certainly it could be seen that the primary aim behind it was to protect more of the level workings at the north of the site. That in itself would have been desirable, but would not have overcome the Council’s objections on the historic landscape front. Nonetheless, the very fact that WML have demonstrated that a scheme can be designed to avoid the great bulk of those workings (and apparently do so over a single weekend) demonstrates the lack of consideration which had gone into the initial design of the scheme from a historic landscape point of view.
- 8.33 Mr Whittaker was criticised as being a “lone voice”. But in fact many of his concerns have now been demonstrated to have foundation in the light of the evidence adduced at this inquiry. Had the relevant consultees been given the same information and evidence, it may well be that they would have adopted a different attitude to the proposed works. We do not know. But their responses must be read in the light of the fact that it is now established (in a manner which the Lawler report of 2000 failed to recognise) that:
1. The level workings at the north of the site cannot accurately be described as “Phase 2” workings. Level workings are shown on the 1814 map alongside the tramway, demonstrating that there were workings going on simultaneously with the early patching and scouring works, and not confined to any one “phase”. Although this map (WML24) was one of Lawler’s sources (CC3, p12), the recognition that these specific workings date back to the early Cyfarthfa period is nowhere stated.
 2. While it is recognised that it is the eastern workings that have been scheduled on their merits as of national importance (taking into account not only their historical significance but also the apparent scarcity of similar workings taken as a group), it is the landscape as a whole (and not just the north and east of the site) which tells a complete narrative of the mineral extraction workings for Cyfarthfa over its rise, peak and decline.
 3. The fact that there are other examples of level workings elsewhere in the County Borough is not the issue. The site has a significant bearing on the integrity and coherence of the Merthyr Tydfil historic landscape area taken as a whole. It is not to be analysed merely as a series of isolated monuments of varying value. That said, the landscape does provide an interpretative aid to the scheduled ancient monument itself.

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4. While it is true that there are other HLCAs associated with Cyfarthfa (like Cwm Glo), this site (unlike others) retains its original open moorland context. It marks the limits of the Cyfarthfa extractive area. While less complex than some others, it retains a simplicity which is easier to read and interpret as a landscape.
 5. Even to the extent that one can assess the landscape as individual features, it is valid to use the ASIDOHL assessment (WML15, p23) not only as a whole but also to single out elements. On that basis, it may be seen that the level workings to be covered by the overburden mound are assessed to be of high (regionally important) value.
 6. The real value of the workings lie in their close association with the Cyfarthfa works and the characteristic “Welsh method” they represent: a story which made Merthyr Tydfil the world centre of iron production and the largest town in Wales, while Wales itself became the world’s first industrial nation. Cyfarthfa, as the largest of the four ironworks and the engine of that growth in the early period in particular, and its associated extractive, production and transportation works are central to that story. And their decline is central to the modern history of Merthyr Tydfil. No-one wishes to pickle the remains for all time and leave them untouched forevermore. But change should be considered and necessary, and should not be assessed purely on the basis of a quantitative analysis of the proportion of such remains to be affected. Mr Marvell accepted this.
- 8.34 It is also plain that Lawler did not undertake his own surveys, or even his own assessment of the value of the landscape’s components, or the landscape taken as a whole (nor has there been one since). Mr Marvell explained that that was not what he was required to do. That may be so. But the fact remains that consultees were presented with an evaluation of the site which assessed no part of it as being of more than local importance. It was an under-evaluation. When part of the site was scheduled as being of national importance, there was no corresponding re-evaluation of the value of the site until the ASIDOHL survey of January 2004. Consultees’ responses must be read in that light.
- 8.35 A further defect of the proposals – and one to which Mr Whittaker was right to draw attention – was the lack of any assessment of the effect of covering the northern level workings with two million tonnes of overburden. There has been no evidence presented to the inquiry of the effect of such an operation. Mr Richards and Mr Marvell referred to each other. Neither could claim to have experience of such a technique used in this way. Mr Whittaker explained that whereas it might be an appropriate technique where there are other load bearing structures (such as a building), the effect on spoil mounds with no internal structure was entirely unassessed. The evidence referred to in Mr Marvell’s final appendix (an e-mail with no supporting analysis or information) is unimpressive, and no witness has been prepared to explain its content, or the assumptions behind it.
- 8.36 Finally, the restoration proposals themselves appear to pay scant regard to the historic landscape. The very concept of such extensive restoration works represents a divorce, not an evolution, from the historic context of the site. Again, it was an approach
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designed and conceived before the landscape's importance had been recognised. Further, the specific landscape feature of the central stream has little or no historic context, and in any event would cut through the northern level workings which it is desired to protect. Finally, the creation of an unspecified number of newt ponds in unspecified locations bears little relationship to the historic development of the site. It is a further intervention, which is required to be made in the area of the site that is to be conserved.

- 8.37 In the result, the development would be contrary to Local Plan policy NH1 and Structure Plan policy EV10. Permission may be refused on this ground alone.

Sustainable Development

- 8.38 Given the above, the proposals cannot be said to be in accordance with the principles of sustainable development. They do not further the objective of the effective protection of the environment. In that context, it is relevant to assess the need for and/or benefits of the development, in order that the balancing exercise recommended by *PPW* may be undertaken.
- 8.39 The figures produced by Mr Richards and Mr Jenkins substantially concur with those given by Mr Powell. Whether one assesses the scheme over a two year period (of coaling) or 3.25 years (of operations), the benefit of the additional coal mined represents a small fraction of the coal required, even for the Aberthaw power station. On any analysis of domestic consumption, the benefit would be no more than marginal.
- 8.40 Nor has it been established that failure to mine the coal and sandstone at this point would be to sterilise the resources. Even if it were, however, that is a possibility which is specifically recognised and taken into account by national and local minerals policies (including MIN1): the environmental effect may be such as to justify the non-use of minerals – despite the fact that minerals may only be mined where they exist. This principle was explicitly recognised by the Inspector and the Secretary of State in the Durham case (MTCBC11).
- 8.41 Likewise, benefits of the provision of employment over the lifetime of the scheme (35 direct jobs over 3.25 years) are a benefit, but one which is entailed in any minerals excavation. Again, this was recognised in the Durham case.
- 8.42 Much reliance is placed on ecological benefits, but they are not assured. Also they may be achievable anyway through precisely the same mechanisms that Mr Pryce relied upon to justify continuing ecological benefits beyond the life-time of the aftercare period. In fact, given the uncertainty thereafter, the claimed benefits in the aftercare period must be set against the loss and disruption of the site during the operational period itself, and until the site regains its former value – assuming it does.
- 8.43 Health and safety benefits are claimed, but it has never been contended that they could not be secured by very much more limited works.
- 8.44 Finally, any claimed benefit of achieving reclamation in accordance with the Local Plan target must be set against the re-evaluation of the site since the plan was adopted.

Other Sites

- 8.45 Much has been made of the proposals at East Merthyr Stage III and at Merthyr Village. These have both been called in by the National Assembly. Accordingly, it cannot be assumed that the loss of such features of importance may be judged to be acceptable. Trago Mills is a more conventional area for reclamation. It is in the urban area and is allocated for employment. It is to be developed for retail, which is itself a beneficial use for the local economy. These other sites are of no assistance. Each case must be assessed on its own merits, and weight attached where appropriate.

The Habitats Regulations 1994

- 8.46 The proposal cannot be undertaken without disturbing a protected species, namely the Great Crested Newt. Taking into account the guidance at paragraph 5.5.12 of *PPW*, paragraphs 4-6 of Circular 23/01 and *MTANI*, it is a material consideration as to whether the three tests of regulation 44 of the Habitats Regulations will be met.
- 8.47 As to the first test, it is accepted that the works cannot be undertaken without a derogation. In that sense, there is no alternative. It is also accepted that the newts could in practice be transferred without detriment to the maintenance of populations of the species concerned at a favourable status in their natural range.
- 8.48 However, there has been no evidence given by WML that there are “Imperative Reasons of Overriding Public Interest” for the proposal. Even the most generous assessment of the claimed benefits for the site do not amount to “imperative” reasons. The difference with a site such as Trago Mills is that there is no equivalent lasting benefit to the economic regeneration of the area as such a scheme as that may entail. In this case, the essence of the scheme is a restoration of existing interests of acknowledged importance. The additional benefits are marginal. There is no imperative reason of overriding public interest. It is a short point, but one which can justify the refusal of permission in the present case.

The Development Plan and the Planning Balance

- 8.49 Taking all the above matters into consideration, it cannot be said that the proposal is in accordance with the development plan. The support given to it by Local Plan policies GR1 and GR2 is in reality limited, given that they do not support a mining-led reclamation scheme. Besides that, it is specifically provided that the scheme should be assessed and designed to retain features of ecological and historical interest. This scheme fails to do so. Even if it is a “dominant” policy, it is not one which ignores the environmental consequences of reclamation. The acceptability of this scheme in environmental terms (as opposed to the simple principle of reclamation) falls to be assessed against the environmental policies concerned. The development is contrary to those policies.
- 8.50 Even were the scheme to be in accordance with the development plan, the considerations set out above, particularly the development in the assessment of the site since May 1999, now weigh heavily against the proposal.
- 8.51 Permission may accordingly be refused. The Council respectfully requests that the appeal be dismissed.
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9. THE CASE FOR THE MERTHYR INITIATIVE GROUP

Inspector's Note. Several of the objections put forward by the Merthyr Initiative Group mirror those of the Council. In order to avoid repetition I have not reported these, except where additional points were raised. The full text of the Group's objections and submissions can be found in MIG(obj)/1 to /5.

- 9.1 Local Plan policy GR1 shows the recommended treatment and after use of the appeal site (Areas DL4 and DL5) as "recontouring for forestry and amenity". In contrast to this, "coal recovery" is included in the recommended treatment for sites in the East Merthyr area (DL14 and DL15). The site is not identified for mineral extraction in the Local Plan. Neither are works of the scale and duration proposed necessary to achieve "recontouring". Moreover, the objective of land reclamation schemes is to restore "damaged land to a more beneficial use". That would not be achieved at Winch Fawr West: the present Grade 5 agricultural land would remain Grade 5. CCW in their consultation response urge that the site is no longer identified for reclamation in the emerging UDP.
- 9.2 The site is important for nature conservation. It has been identified as a cSINC and provides a natural link between the Cynon Valley and Cwm Ffrwd SINC's. That link would be disturbed. Moreover, in 1998/1999 WML's ecological consultant assessed the assemblage of amphibians on the site as of sufficient importance to warrant candidate SSSI status.
- 9.3 If implemented, the proposal would result in unacceptable harm to the habitats and species within the site, including ponds and habitats for amphibians. Recovery from that harm would, at best, only be achieved in the long term. The population of Great Crested Newts could suffer a decline. WML have failed to demonstrate that the development is required for preserving public health or safety; or that there are imperative reasons of overriding public interest that would justify interference with the Great Crested Newts; or that there would be beneficial consequences of primary importance for the environment, that would justify interfering with the protected species.
- 9.4 There is also a high risk that the earthworks will result in an increase in ferruginous water and water contaminated with solids being discharged into the Nant Ffrwd and then into the Taf Fawr above Cefn Coed. This would suffocate riparian life and water dependent fauna in an identified SINC. The risk of flooding in the adjoining estates would also rise. Alterations to the flow pattern could lead to alterations to the water table which would increase the risk of subsidence.
- 9.5 The proposal would destroy (in the excavation area) and adversely affect landscape of archaeological significance elsewhere on the site. That landscape is an integral part of the historic Cyfarthfa lease and the Merthyr Tydfil Landscape of Exceptional Historic Interest. It contains scheduled remains of national importance. In their letter to the Planning Inspectorate of 13 October 2003 Cadw stated "that the development would seem to be contrary to National Assembly's policies towards the preservation of the historic environment and the appropriate structure and local plan policies covering the same policy area" (WML5, Appendix AM10). Subsequently, in their letter of 17 November 2003 (WML5, Appendix AM11) they expressed concerns regarding potential damage to historical features caused by contractor's plant. They noted that 68.5ha of land within the registered landscape of outstanding interest would be

remodelled and some of the distinctive features of the Phase 2 workings would be lost. These comments come from a competent statutory consultee and should be given significant weight.

- 9.6 The statements of common ground and draft conditions for the control of noise are not sufficiently robust to protect the amenity of nearby residents and the public interest. The limits proposed in *MPG11* were set over ten years ago and do not reflect current concerns on the environmental and health effects of intrusive noise pollution. The noise limits set in the conditions are too high.
- 9.7 No measurements were made of existing ambient dust levels in the area. Ambient levels of particulates were not established locally and no details of exhaust emissions from plant were provided. Prevailing winds would carry fugitive dust, including fuel contaminated particles, over Castle Park and Beacon Heights initially and subsequently over Gellideg and Cefn Coed to the detriment of local residents. In his report to the planning committee Dr Mark Thomas is quoted as saying “Any operation that increases PM₁₀ levels will have an adverse health effect...it follows that any civil engineering operation should only be considered if the long term effect is to the benefit of the community”.
- 9.8 The proposed noise and dust monitoring programmes are inadequate. Monitoring is too infrequent and unstructured. The monitoring capacity and capability of Council staff to enforce the conditions is questionable.
- 9.9 Cumulative impact on residential amenity is a material consideration that did not receive due consideration. The cumulative impacts of the Trago Mills Land Reclamation scheme and Bryn Defaid Auger Mine were not considered. The first involves a huge cut and fill muck shifting contract of 24 months duration. The second involves recovery of 60,000 tonnes of coal and 10,000m³ of sandstone over an 18 month period by “auger methods”. Blasting may also be required.
- 9.10 Footpaths and tracks used by residents for informal recreation purposes would be closed off during the active phases of the development and not reinstated. Residents’ access to the countryside would thus be compromised.
- 9.11 In landscape terms the proposal represents an inappropriate development on a site which falls within a “Protected Open Space Policy Area” recommended by the LANDMAP study. The zone of visual influence of the proposal is extensive (WML7, paras 2.19 to 2.27). Visual impact would be moderate to severe. This view is shared by the Brecon Beacons National Parks Planning Committee, who recommended refusal of the application
- 9.12 Having attended the inquiry and considered the evidence, the Merthyr Initiatives Group maintains its objection to the proposal. It would be unsustainable and contrary to the development plan, *PPW* and *MPPW*. No community benefits would arise. Accordingly, the appeal should be dismissed.

10. THE CASE FOR THE CASTLE PARK RESIDENTS ASSOCIATION

Inspector's Note. Some of the objections put forward by the Castle Park Residents Association overlap with objections raised by the Council and the Merthyr Initiative Group. In order to avoid repetition I have not reported these, except where additional points were raised. The full text of the Association's objections and submissions can be found in CPRA(obj)/1 to /5.

Need

- 10.1 WML have not shown that the need to extract the coal or sandstone is sufficient to outweigh the importance of the site in terms of its local, national and international ecological and historic value.
- 10.2 Aberthaw Power Station is not working at full capacity and their interest in purchasing the coal is subject to the price being competitive. Celtic Energy also expressed an interest in purchasing the coal to sell on to Aberthaw, on the same basis. However, there are also plans to extract some 10 million tonnes of coal in Merthyr Tydfil from Ffos-y-Fran, and the applicants on that site are also looking to sell their coal to Aberthaw. With such a large amount of coal, the applicant at Ffos-y-Fran may well be able to undercut WML.
- 10.3 Similarly, the case for the steam heritage market was not made. Demand was not quantified. This is important as 40% of the output is predicted to go to this market.
- 10.4 In order to extract the coal, WML would have to burn some 250 litres of fuel in each prime mover and dump truck. Further fuel would have to be used to transport the coal to Aberthaw. Because the site does not have a rail link, the coal would initially have to go by road to Tower Colliery or Cwmbargoed.

Loss of Residential Amenity to Residents of Castle Park

- 10.5 It is a fundamental right contained in European human rights legislation that residents have the right to the peaceful enjoyment of their property. The proposal would breach that right. Residents of Castle Park would suffer from noise and dust pollution. Changes in the groundwater would affect the flora and fauna and residents would lose the enjoyment of wildlife visiting their gardens. Stress would result from concerns about the effect on their property.
- 10.6 In addition, local residents use the application site for informal recreation. It would be closed to them for the period of the operations and aftercare, which could last for over 25 years.

Noise

- 10.7 Castle Park is in a semi-rural location. Ambient noise levels are lower than for many other parts of the town. At Harlech Drive the ambient noise levels after 0800 is 42dB_A. On Winch Fawr Road it is 42dB_A. The increase in noise levels from the works set by the proposed conditions would be detrimental to the quality of life, particularly for those residents who are at home during the day. If the proposal is permitted, noise monitoring equipment should be placed in several locations on Castle Park. It should be calibrated to record noise levels in excess of 52dB_A and monitored by an officer of the Council.

Self monitoring by the developer, as proposed, is not acceptable; rather active monitoring by the local planning/mineral authority should be required by condition.

Dust and particulates

- 10.8 The Residents Association believes that the air quality in the vicinity of Castle Park is currently good. There is concern that the site operations would lead to an increase in particulates at PM₃ level, which would be detrimental to the health of at-risk groups. Cyfarthfa Ward, of which Castle Park is part, is a Communities First area, the Ward ranking as the 77th most deprived in Wales. Poor air quality should not be added to the list of issues to be resolved.
- 10.9 Dust from the site would be blown over the estate by the prevailing wind, settling on washing, window sills, cars, outside garden furniture etc. Residents would have to pay for cleaning it up and for more frequent house painting. Emissions from plant on the site would add to the problems.

Wildlife

- 10.10 The wildlife found on the application site does not only live on the site. There is no boundary that isolates the gardens from the site. Bats have been seen in Castle Park and toads, frogs and damselflies regularly visit. These originate from the ponds on the site. If the breeding areas are destroyed they will not visit the gardens in Castle Park. The effects of changes in the groundwater regime on fauna and flora should also be considered.

Stress

- 10.11 The Residents Association recognises that devaluation of property is not a valid planning consideration when determining an application. However, it is symptomatic of the concerns that the majority of residents have about the effects that living near an opencast site would have on their amenities. Evidence on property values provided by the Association (CPRA(obj)/1) was not challenged by WML.
- 10.12 The potential for the works to cause structural damage to properties is a cause of much stress and anguish to the residents. It is understood that the depth of working would not extend to the water table. However, there are concerns that the land above the water table would dry out. It is in this area that many of the underground streams, watercourses and mine workings are to be found. There are old adits and mine workings under Castle Park, but residents do not know where they are and where they are linked to. This is important, as they could cause instability in the ground as watercourses dry up. This could result in structural damage to the houses. The losses suffered would not all be covered by insurance. Accordingly, if planning permission is granted, a condition should be imposed requiring WML to compensate residents for any uninsured losses.
- 10.13 The potential for water from the site to cause flooding is a further concern, particularly for residents living close to the site boundary.

Cumulative Effects

- 10.14 Nuisance from noise, dust and particulates from the appeal site needs to be considered in combination with that from the nearby Trago Mills development and the Mynydd Aberdare (Bryn Defaid) proposal which is currently before Rhondda Cynon Taff CBC. That application is being promoted by WML and both sites may be worked at the same time. The cumulative impact on residents needs to be investigated.

Other Matters

Visual Impact

- 10.15 The dualling of the A465(T) Heads of the Valley Road will result in a cut 25m deep at Baverstocks. This will negate any claimed benefit of removing a supposed visual eyesore: you will not be able to see any of the land on either side of the road. On the other hand, residents will be able to see right into the application site from many areas of Castle Park.
- 10.16 From a distance, WML's landscape witness accepted that the site merges into the natural landscape of the adjoining Brecon Beacons National Park and is indistinguishable from it. However, the opencast workings would be highly visible.

CCW

- 10.17 CCW originally registered an objection to the application, noting that these objections would only be withdrawn on the submission of revised plans. The e-mail stating that the objections have been overcome is insufficient as it does not give any reasons for a decision to remove the objection. Neither was it followed up with a signed letter on headed paper.

Change to after-use strategy

- 10.18 The Association believes that the amendments made to the after-use have significantly altered the scheme from the one considered by the Council. It was the clear intention of the scheme as originally promoted to restore the site to agricultural use, with improved potential for grazing. This would have improved the income the landowner could expect from the site. The "new" ethos is to return the land to what it is now, opening up part of the land on a "managed" basis with restricted grazing, thereby reducing the income the landowner could expect from farming the site.
- 10.19 In the Association's view the change is fundamental. The application should be rejected on this basis and a new application submitted should WML still wish to proceed with the application.

Alternatives

- 10.20 If the appeal is dismissed, there is a possibility under Communities First that arrangements could be made with the landowner for limited access to the less sensitive areas of the site for informal leisure purposes by local residents.
- 10.21 Funding for this could be sought via Tir Gofal (in the new financial year) and under Objective 5 funding, on diversification of agricultural use to compensate the landowner.
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This could include improvements to the footpath access, whilst restricting access to the other areas of the site, and paying towards the preservation and interpretation of the site. A similar scheme has been undertaken at Carreg Cennen Castle in Carmarthenshire where the owner, working with Cadw, allows access to the castle for a small fee. The Rhydycar Development Partnership is also looking at a scheme at the old Colliers Row site (Heolgerring to Abercanaid). This site, as part of the Cyfarthfa lease, might be linked with that development.

- 10.22 What is done with the site depends on the willingness of the landowners. If the right financial incentives are available, which allow them to continue to farm the land but increase their income from other sources, alternatives may be possible. No written evidence has been produced by WML to show that the landowners would refuse to work with third parties. Equally, no written evidence has been provided to show that they would be willing to agree to the proposed aftercare programme or that they would be willing to accept the restrictions placed on their use of land, as a result of the amendments to the scheme proposed by WML (see paras 10.18 and 10.19 above).

Conclusion

- 10.23 In the Association's view there would be no benefits to the local community which would mitigate against the loss and degradation of residential amenity, dangers to health, loss of habitat, and other harm that would result from the proposal. Many of the residents in Castle Park have lived with planning blight from the proposed opencasting since 1996. It is time to lift this blight. Planning permission should be refused.

11. THE CASES FOR OTHER OBJECTORS TO THE PROPOSAL

- 11.1 **Councillor Baynham** (AB(obj)/1) notes that the site is of significant importance in terms of its beauty, environment and habitat. The range of wildlife seen in the area includes rare birds of prey, hare, meadow pipit, skylark and (surprisingly) otter. These would be placed under threat if the proposal proceeds. Residents in the Vaynor Ward, which lies to the north east of the site, would also be in direct line of dust blown from the workings.
- 11.2 **Councillor Elliott** (LE(obj)/1) records that, because of the opencast issues, Castle Park residents sold their properties for around half their market value in order to move from the estate. When the threat of opencast was not there, properties could be sold for their full market value.
- 11.3 **Councillor Stanfield** (LS(obj)/1) is firmly of the view that opencast mining operations cannot be justified near to where people live. In Scotland and England, opencast coaling as close to properties as proposed at Winch Fawr would not be allowed.
- 11.4 Health issues are a prime consideration. The site is only some 3km from the centre of Merthyr Tydfil, which has an urban population of around 25,000. Health worries are the principal factor in the minds of people generally and concerns about dust were one of the main objections raised by local residents when the application was before the Council. Whilst the evidence is not conclusive, the addition of a toxic mixture of diesel fumes and minute particles to the atmosphere would not be simply passive.

- 11.5 A joint document produced by the local health board and the Council shows that the health of the local population is poor in comparison to that in the rest of Wales. 17.5% of the population have difficulties breathing, and data from the 2001 census shows that 30% of the population reported a long-term illness. Merthyr Tydfil has higher death rates associated with breathing difficulties than the Welsh average.
- 11.6 Faced with a fundamental problem of a declining population over many years the Council agreed a “Vision for the Future”. The main aim of this was “by 2010 to make Merthyr Tydfil a safer, healthier place where people want to live and come to live”. Approval of the proposal would impede and undermine that ambition.
- 11.7 Merthyr Tydfil has suffered enough from the ravages of the past. It should be allowed to continue to move from the old industries based on coal and iron to more technologically based and service industries for which clean air and good environmental conditions are important. Accordingly, the appeal should be dismissed.
- 11.8 **Mrs Jones** reported that when she was living close to an area where two tips were being moved dust and noise were such that she was unable to open her windows. She is particularly concerned that dust from the workings could affect children, many of whom already use inhalers. Children are the future; and we should take great care to protect their health. The appeal should be dismissed.

12. WRITTEN REPRESENTATIONS

Representations from Residents and Others

- 12.1 Prior to the Council’s determination of the application, some 50 written representations were submitted¹. Of these, some 37 objected to the proposal. Most of the grounds for objection cited were similar to those raised by the various parties appearing at the inquiry. Concerns were also expressed, however, regarding the applicant’s failure to provide any “community benefit” and highway safety issues. Some considered that inward investment in the area would be prejudiced. A petition was also submitted opposing the proposal and signed by 424 residents of Castle Park, Twyncarmel, Winch Fawr and Heolgerrig.
- 12.2 Of the 13 remaining representations, 2 were recorded as “enquiries”. The other 11 wrote supporting the proposal, principally because of the employment and economic benefits it would bring. Others were of the opinion that the area would be improved visually, and reclamation achieved at no cost to the public.
- 12.3 Prior to the inquiry, 3 residents and others wrote objecting to the proposal² and 3 wrote in support. Again the issues covered were generally similar to those covered in the verbal evidence.

¹ The written representations are summarised in the Planning Manager’s report to Committee, pages 30 to 33.

² One of these noted that previously they had written to the Council supporting the application. However, when they had done so, they were not in possession of the full facts. They now wished to object and withdraw the previous letter of support.

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- 12.4 A substantial submission was also received from the Merthyr Tydfil Anti Opencast Campaign, setting out their objections (MAOC(obj)/1). These submissions concentrate particularly on the health issues associated with dust from opencast mining. They question the “Newcastle Study” and provide examples of other studies that have concluded that opencast operations are detrimental to the health of the nearby population, including children. They note that Merthyr Tydfil has the highest incidence of respiratory illness in Wales and the highest percentage of the population with a limiting long-term illness. Permitting opencasting at Winch Fawr would run counter to the National Assembly’s desire for sustainable development and a “Better Wales”.

Consultation Responses

Consultation responses received by the Council are summarised in the Planning Manager’s report to Committee (CC28, pp 34-44). Significant responses are as follows:

- 12.5 The **National Assembly of Wales (Transport Directorate)** raised no objection to the proposal, subject to a condition being imposed to safeguard the land required for future widening of the A465(T), Heads of the Valleys Road.
- 12.6 The **Glamorgan Gwent Archaeological Trust Ltd** initially objected to the proposal. Subsequently, following further work by Martin Lawler (of GGAT Contracts) and WML’s revision of the proposals for the Heritage Conservation Area, they wrote noting that the development “.....would not have a severe detrimental effect on the registered historical landscape of Merthyr”. They recommended that a condition should be attached to any planning permission requiring a written scheme of investigation.
- 12.7 The **Countryside Council for Wales (CCW)** initially wrote objecting to the proposal on account of the effect it would have on the historic landscape and industrial and archaeological feature associated with the Cyfarthfa Ironworks. They advised that the proposal would be close to and visible from the Brecon Beacons National Park. On the site’s biodiversity, they noted that natural recolonisation had taken place on the site which had resulted in vegetation which is of value both in its own right and as a habitat for invertebrates and other animals. They suggested that, should the scheme be permitted, then restoration should aim to restore biodiversity in the area directly affected by coaling and the overburden mound. They noted that Great Crested Newts were present on the site; that they are protected under the 1981 Wildlife and Countryside Act; and that development could only lawfully be permitted if strict criteria are satisfied.
- 12.8 In a subsequent letter they noted the conclusions of the GGAT (Lawler) report and confirmed that they agreed with the study’s conclusion that “....the impact of the proposed development on the most significant landscape features will be relatively small.” They expressed general support for the proposed mitigation measures and provided advice on the restoration proposals.
- 12.9 In a third letter they reiterated their concerns regarding biodiversity and the presence of a protected species on the site. They reminded the Council that withdrawal of their initial objection was contingent on the submission of amended plans, particularly with regard to the restoration scheme and mitigation measures.
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- 12.10 In October 2003 they wrote to the Planning Inspectorate stating that they would like to add to their previous comments. No further correspondence was received. However, an e-mail dated 14 January 2004 was sent to Andrew Marvel confirming that “we are happy with the mitigation strategy details to safeguard the more significant historic landscape elements on the site” (WML5, Appendix AM2). They did not appear at the inquiry.¹
- 12.11 Following two “holding” letters, **Cadw** wrote to the Council in January 2001. In this letter they expressed the view that:
- ...this proposal is of a scale that it could potentially have a significant impact on the historic landscape. In conjunction with other proposals for opencast mining or reclamation in the area this could potentially represent a major reduction in the historic landscape resource. The new archaeological study clearly demonstrates the importance of this area.
- 12.12 They continued to strongly recommend that conditions be applied to ensure appropriate treatment of the archaeological and landscape resource and noted that WML had indicated a willingness to work within the conditions proposed before concluding that:
- While some features of landscape interest would be adversely affected by the proposals, the recent landscape study indicates that the most important of such features are located outside the area which would be directly affected by the opencast operations.
- 12.13 They further noted that the “sensitive remediation” of hazards outside the working areas may provide an opportunity to achieve the principal aims of reclamation while retaining and enhancing the historic importance of the landscape.
- 12.14 In a subsequent letter to the Council they confirmed that the Iron Ore Scours and Patch Workings had been scheduled as an ancient monument.
- 12.15 In the run-up to the inquiry Cadw were asked to provide an archaeological assessment of the proposals. They wrote initially on 13 October 2003 concluding that the proposal would “appear to be contrary to the National Assembly’s policies towards the preservation of the historic environment and the appropriate structure and local plan policies covering the same area”. Subsequently, having been provided with further information, they provided a fuller response (WML5, Appendix AM11). In that letter they noted that the “most significant” Phase 1 workings and about half the important features surviving from Phase 2 would “remain almost unaltered” in the optional reclamation area (now referred to as the “Heritage Conservation Area”). As to the other Phase 2 workings, some would be buried under the temporary overburden mound and in respect of these Cadw expressed the view that:

Given the size of the machinery involved in the creating and removal of the temporary stockpile it is unlikely that the surface detail of the Phase 2 features in this area would escape damage and loss of definition.

¹ Note. I understand that a representative of CCW was present on Day 1 of the inquiry (see attendance sheet). However, he/she attended only as an observer and did not indicate a wish to speak.

- 12.16 They recommended that the archaeological watching brief should be extended to provide a watching brief for recording of any features revealed during the initial clearance of the extraction area and to assist in supervising the removal of the temporary stockpile and soil bunds to ensure minimal damage to any features buried beneath these areas. In conclusion they noted that:
- in considering the evidence...the Inspector will have to weigh the loss of some significant features of Phase 2 of the development of this area of historic landscape against the other evidence that is to be presented.
- 12.17 The **Environment Agency** do not object to the proposal subject to appropriate conditions being imposed to prevent pollution of the water environment (CC58).
- 12.18 The **Brecon Beacons National Park** Planning Committee resolved, following a site inspection, to object to the proposals on the grounds that they would have a significant visual impact when viewed from the National Park Boundary.
- 12.19 **Rhondda Cynon Taff CBC** initially objected to the proposal because of the inadequacies in the ES. In a subsequent letter, an officer of the Council confirmed that further information had been supplied. However the officer was "...not able to confirm that the information is sufficient to warrant the withdrawal of the holding objection....".

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13. CONCLUSIONS

Inspector's Note. In this section references in square brackets [] indicate the paragraph in which the relevant source material can be found. Where I wish to draw attention to a particular word or passage, I have done this by underlining.

Introduction, Policy Context and the Main Issues

- 13.1 The proposal is described as being for the reclamation of derelict land, accompanied by the extraction, processing and sale of coal and sandstone. In essence, it seeks permission to opencast part of the site in order to fund the reclamation works. Approximately 400,000 tonnes of Welsh Dry Steam Coal would be extracted, together with up to 250,000 tonnes of Pennant Sandstone. The area of land within the site boundary extends to 98.5ha. Of this, approximately 32.5ha would be opencast and a similar area would be used to accommodate the temporary soil and overburden mounds, water treatment facilities etc. required to support the opencast operations. In the remaining 30ha (the "Heritage Conservation Area") reclamation works would be restricted to making safe crown holes, adits and the like and making good areas of damaged vegetation and some of the scars from more recent opencasting workings.
- 13.2 The land within the site is identified as derelict land in the adopted local plan, which supports its reclamation for amenity and forestry purposes [6.10]. There is no dispute that, in the absence of the appeal proposals, reclamation will not be achieved within the plan period. The WDA do not have the money to do the work and clearly do not regard the site as a priority area. Equally, the Council have not set aside money for the work and the landowner cannot be compelled to do it [6.12]. Whilst the Castle Park Residents Association suggested that some funding might be available to secure limited works to facilitate access to the site [10.21], their suggestions were not supported by evidence to show that the funds required would actually be available. Accordingly, it seems to me that, if the appeal scheme does not proceed, then the site is likely to remain in essentially the same condition as at present, subject, of course, to changes consequent upon the effects of weather, time and its use for grazing. "Reclamation" in the sense of carrying out engineering works to recontour the land and remove the visible scars of past mining activity would not be achieved [6.13].
- 13.3 The support given to reclamation proposals by the development plan is not unconditional, however. The reclamation and minerals policies in the Structure and Local Plans can, in my view, rightly be described as the "dominant policies" [6.8; 6.16]. But they are conditional. Structure Plan policy D1 states that "...derelict land will be subject to treatment appropriate to the condition and nature of the site and proposed after-uses, during the plan period" [4.7]. Similarly, Local Plan policy GR1 specifies a number of criteria against which proposals for reclamation of derelict land will be assessed. The first of these requires that "the developer must undertake adequate site investigations to establish the exact nature and scale of the reclamation works required, including the need to retain features of water, wildlife, geological and historic interests identified during the assessment and design of the scheme" [4.8].
- 13.4 Clearly the support for reclamation which the policies offer is subject to the reclamation works being "appropriate" and "of the nature and scale required". This is not in dispute; indeed it is implicitly recognised by the appeal proposal which proposes only minimal

reclamation works in the Heritage Conservation Area, whilst proposing more extensive works elsewhere. It is also reflected in the explanatory text accompanying the policies. In the Structure Plan, the text at paragraphs 8.8.1 to 8.8.3 recognises that there are degrees of dereliction and that in some cases schemes “may require little or no treatment because of the quality of natural colonisation which may already have occurred” [8.18]. Similarly, in the Local Plan, the list in paragraph 6.18 specifies the “recommended treatment and after-use” for each reclamation site. For the appeal sites, this is “recontouring for forestry and amenity”. For other sites, however, the proposals range from “limited action” and “limited landscaping works only” through to “removal and recontouring ...” and “coal recovery and restoration ...”[9.1].

13.5 In the light of this policy context and the representations and submissions made, I consider the main issues are, firstly:

- whether the scale and nature of reclamation proposed would be appropriate for the appeal site having regard in particular to the likely effects on features of nature conservation interest, the historical landscape and the living conditions of local residents, and secondly;
- if not, whether there are other material considerations, including considerations of an economic nature which would indicate that planning permission ought, on balance, to be granted (the planning balance).

13.6 In my view, these represent the main planning issues. Submissions were, however, also made on legal and other questions which need to be addressed. In particular:

- whether the “environmental information” available to the National Assembly is adequate for the purposes of the Town and Country Planning Act (Environmental Impact Assessment) (England and Wales) Regulations 1999;
- whether the changes to the proposed after-use strategy have significantly altered the scheme compared to that considered by the Council; and, if so, whether the changes are such that a new application ought to be submitted; and
- whether, as a matter of policy, planning permission ought to be refused on account of the effect that the proposal would have on a European protected species, namely the Great Crested Newt.

Issue 1 - Are the Proposals Appropriate?

Introduction

13.7 There is no doubt that recovery of coal by opencasting, as a means of funding the reclamation of the site, would involve substantial engineering works. Coal would be extracted over a thirty month period from a pit in the south-western part of the site. The opencast operation would involve the removal and replacement of some 10 million cubic metres of overburden, with the excavation extending to a maximum depth of 50m. Associated with this, an overburden mound would be constructed, together with soil mounds and water treatment areas.

- 13.8 On their face it would appear that the proposals go significantly beyond what might reasonably be “required” to achieve the reclamation and recontouring anticipated by the adopted Local Plan. However, the reclamation policies in the plan are not prescriptive as to how reclamation should be achieved and there is no realistic prospect of funding being available for any alternative proposal, at least in the short term [6.12]. In this sense, it could be argued that the proposals are “required” in order to fulfil the plan objective of achieving reclamation in the plan period [7.8].
- 13.9 However, even if this line is taken, the proposal does not automatically conform to policy GR1 of the Local Plan. The first criterion still requires a balance to be struck between the nature and scale of the proposed reclamation works and the need to retain identified features of interest. Other criteria also need to be satisfied. In the terms of the Structure Plan, the proposals have to be “appropriate”. I move on therefore to consider the impact that the proposals would have on the features of interest.

Nature Conservation

- 13.10 It is common ground that the site is of significant nature conservation interest. It supports a mosaic of upland habitats including areas of purple moor-grass, rush pasture, dry acid grassland, dwarf shrub heath and lichen-bryophyte heath. There are upwards of 20 ponds on the site many of which provide breeding grounds for amphibians, including the Great Crested Newt (*Triturus cristatus*), which is a species listed in Annex IV of the Habitats Directive [2.2; 6.26]. Some of the habitats are identified as of European significance, being included in Annex 1 of the Habitats Directive; others are identified as habitats of principal importance for the conservation of biological diversity under the Countryside and Rights of Way Act and the UK Biodiversity Action Plan.
- 13.11 Whilst no part of the site carries any statutory nature conservation designation, it has recently been identified as a cSINC and it is common ground that it fulfils the criteria for designation as a SINC. Whilst there are many other cSINCs in the County Borough, and their future planning status is uncertain, this is clearly an area of some quality [6.32, 8.29]. It is equally agreed that the various surveys undertaken are sufficient to determine the biodiversity interest of the site [5.32].
- 13.12 There is no doubt that the proposal would significantly affect the site’s nature conservation interest during the period of the works. Areas of acid grassland, heath and other habitat in the working area would be either lost or covered with the overburden and soil mounds [3.3]. Many ponds would also be lost, including several used by Great Crested Newts.
- 13.13 Comprehensive mitigation proposals are, however, proposed. These include proposals to trap and relocate the Great Crested Newts to existing and new ponds in the adjoining Heritage Conservation Area [6.21].¹ It is also proposed to strip and store soils and vegetation from the areas of site to be disturbed, for use in areas prepared for restoration. Works on site would be supervised by a qualified ecologist, who would continue to provide advice during an extended aftercare period [6.22]. During the period of the works and the aftercare period, grazing and other farming operations on

¹ Subject to the appropriate licence being obtained.

the (non-operational) areas of the site would be managed with a view to optimising the site's habitat value.

- 13.14 The mitigation proposals would be secured by means of agreed planning conditions, backed by a financial bond, and, in principle there is no dispute that they are likely to be successful. The expert witnesses representing WML (Mr Pryce) and the Council (Dr Hill) agree that the mitigation proposals are capable of restoring the site to a level of biodiversity interest greater than that which it currently has [6.18]. The issue that separates them concerns the aftercare period and, in particular, the length of time required to restore the biodiversity interest of the site.
- 13.15 In this respect the two expert witnesses were divided. Mr Pryce argued for an aftercare period of 10 years. Dr Hill argued for an aftercare period of 25 years [6.20]. Having considered the evidence, I tend towards a middle view. Mr Pryce is clearly experienced in restoration works. However, experience of restoration schemes aimed at restoring opencast sites for their nature conservation interest is limited (as opposed to restoration for primarily agricultural purposes). Also, the examples that he drew on to illustrate where restoration had successfully been carried out in the past were relatively small-scale in comparison to that proposed at Winch Fawr [8.28]. Whilst I was impressed by the work I saw at Nant Helen, it was clearly still developing and in several areas the ground cover was noticeably less dense than on the appeal site. The intricate mosaic of habitats, which are a characteristic of the appeal site, and which have clearly developed in response to local variations in the soil, drainage patterns, microclimate and the like, were also much less evident on that site.
- 13.16 I was also left in some doubt as to whether the restoration of the steeper sections of the old spoil heaps which it is proposed to retain under the overburden mound would be successful. Here Mr Pryce accepted, when I questioned him on the matter, that the present vegetation would be smothered and unlikely to successfully regenerate without intervention when the covering was removed. He advised that it would be re-established, probably by scattering turves and seeding with an acid grassland mix. Whether this would be wholly successful is, however, in my view, doubtful. The present vegetation has become established over many decades and it has clearly responded to local variations in soil conditions, slope and climate. In some areas it varies quite dramatically over very short distances. In other areas, slopes remain bare and erosion appears to be ongoing, notably on the slopes facing Beacon Heights. There is, to my mind, a significant risk that attempts to re-establish comparable habitat could fail, particularly on some of the steeper sections of the site.
- 13.17 Overall, however, I have no reason to doubt that, over the vast majority of the site, useful habitat could be re-established within the 10 year period which WML suggest. Within the Heritage Conservation Area, the proposal to manage the land for its habitat value would be positively beneficial. Elsewhere, it seems to me that there is a significant risk that some of the existing habitat would fail to re-establish. One habitat type might be replaced by another more suited to the new conditions [8.27]. However, I have no reason to doubt that the overall biodiversity value of the site would be restored [6.18]. Clearly, this would require significant resources to be applied and commitment on the part of the developer and the landowner. But there is no reason to suppose that such co-operation and commitment would not be forthcoming having regard to the terms of the agreed conditions and the strong incentive provided by the bond [6.23].

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- 13.18 I also have no reason to dispute Mr Pryce's conclusion that, with appropriate mitigation works, the site's holding capacity for the Great Crested Newt could be increased [6.26].
- 13.19 In the longer term, beyond the end of the aftercare period, there is clearly potential for actions by the farmer and others to degrade the site's habitat value [8.28]. This, however, is the situation at present. Therefore, I do not see that it should tell against the proposal.
- 13.20 As to the development plan, policy NH5 in the local plan and policies EV5 and EV6 in the Structure Plan, broadly flag damage to SINCS as matter that should tell against a proposal. However, the policies accept that where damage would result, appropriate compensation measures may be provided [6.8]. That would be the case here. In the short term, losses would result; but in the medium term, the site's biodiversity value would be restored. Accordingly, I conclude that only limited weight should be attached to objections with regard to the proposal's effect on nature conservation interests.¹

Historical Landscape

- 13.21 The historical landscape value of the site is undisputed. It is within the Merthyr Tydfil Landscape of Outstanding Historic Interest. It has strong links to the Cyfarthfa Ironworks. In 2000 Cadw assessed the site and scheduled an area of the Phase 1 workings as an Ancient Monument [2.11]. Other parts of the site also have strong links with the Cyfarthfa Ironworks, however, and there is strong evidence of the early phases of extraction remaining on the ground. This is particularly so in the areas of the site close to the northern and eastern boundaries where the remains have not been disturbed by more recent opencast and quarrying operations.
- 13.22 The full importance of these remains was first recognised by Lawler. The report he produced was commissioned by WML from GGAT (Contracts) in response to concerns expressed in the consultation period. Some of the details in the report have been criticised by the Council's expert witness, Mr Whittaker, but it is generally accepted as a competent and useful study that has formed the basis for much of the following work.
- 13.23 Following the publication of the Lawler Report, the proposals were revised to reduce the impact on the historic landscape. The previous "Area of Optional Reclamation" was re-defined as a "Heritage Conservation Area" and its boundaries were adjusted slightly to include some of the more important remains. The proposed water treatment ponds near to the northern boundary were moved and some of the soil storage mounds were reduced in size [1.4]. Proposals were also drawn up to protect the "Phase 2" remains falling under the proposed overburden mound by covering them with a geotextile membrane and a layer of gravel in order to protect them from damage. On completion of the works this protective covering would be removed [3.10].
- 13.24 The Scheduled Ancient Monument is wholly within the Heritage Conservation Area and it would not be directly affected by the proposals [6.39]. Elsewhere in the Heritage Conservation Area, the historic landscape, which largely dates from the first two phases of the Cyfarthfa Ironworks, would also be preserved. In this area works would be

¹ But see paras 13.78 ff below for my conclusions on the protection afforded to the Great Crested Newts under the Habitats Regulations.

confined to minor works necessary to improve safety, re-establish damaged vegetation and provide additional habitat, including ponds to accommodate the Great Crested Newts which it is proposed to relocate from the working area.

13.25 Other mitigation measures proposed include a full topographical survey of the site. Those significant remains that would be lost would be recorded and a watching brief would be maintained to record any buried features of interest found during the excavation works.

13.26 Cadw were consulted on the application and on the appeal. In their response to the appeal they initially expressed the view that “the development... would seem to be contrary to the National Assembly’s policies towards the preservation of the historic environment and the appropriate structure and local plan policies covering the same policy area”. Subsequently, having been provided with further information, they provided a fuller response. In that letter they noted that 68.5ha of land within the registered landscape of outstanding interest would be remodelled. They further noted that, in the remaining 30ha, (the Heritage Conservation Area) the “most significant” Phase 1 workings and “about half of the important features surviving from Phase 2” would remain almost unaltered. They expressed concerns that the surface features of the Phase 2 workings in the area under the overburden mound might be damaged and lose definition [12.15]. They suggested that the proposed watching brief should be extended, before concluding that [12.16]:

....in considering the evidence....the Inspector will have to weigh the loss of some significant features of Phase 2 of the development of this area of historic landscape against the other evidence that is to be presented.

13.27 As to the area under the overburden mound, I share Cadw’s concern. The shape of the landform in this area of the site is complex and some of the cuttings leading to adits and other features are relatively small and steep sided. The proposed protection measures are not unique, but there is no evidence that they have been successfully employed on any site similar to that which it is proposed to protect at Winch Fawr. Also, having seen the site, it seems to me that it will not be at all easy to lay the geotextile and the gravel layer and re-excavate it without risking significant damage to the underlying remains. Space to manoeuvre large plant is restricted, but the volume of material involved is such that small plant would be uneconomic. To my mind, there is a significant risk that these remains would be damaged.

13.28 As Mr Whittaker notes, some of these workings probably date from Phase 1 (as opposed to Phase 2) [8.33]. However, there is no evidence that this materially increases their importance.

13.29 In the remaining operational area, some remnants of the Phase 2 workings which stand on the upper slopes of the site would be lost. However, these were fragmented by the subsequent opencast workings and are less intact than those in the Heritage Conservation Area and under the overburden mound. To my mind, the proposal to preserve them by record is an appropriate response where development requires that they be lost. Notwithstanding this, the policies make it clear that preservation in situ is preferable [4.6].

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- 13.30 As to the overall effect on the historic landscape, this was assessed using the ASIDOHL methodology as a “moderate” impact [6.40]. The methodology is new and experience in using it is limited. However, it seems to me that the conclusion is fair and there was no evidence at the inquiry that suggested otherwise.
- 13.31 In conclusion, there is no doubt that the historic landscape value of the site is significant. It has close associations with the Cyfarthfa Ironworks. Whilst the proposals would ensure that the most important remains would be preserved, some of the Phase 2 workings on the upper slopes would be lost. Also, there is, in my view, a significant risk that the Phase 1/Phase 2 remains under the proposed overburden mound would be damaged. Those remains that would be lost are not unique and they would be surveyed and preserved by record. However, from the historical perspective, it would clearly be preferable to limit disturbance of all Phase 2 remains to the minimum. The appeal proposal would not achieve this. Overall, the impact on the historic landscape is assessed as moderate. Accordingly, it is my view that the impact on the historic landscape is a factor that should be afforded weight against granting planning permission for the appeal proposals.

Effect on the Living Conditions of Local Residents

- 13.32 Whilst the Council raise no concerns with regard to the effect that the proposals would have on the living conditions of local residents, the Castle Park Residents Association, the Merthyr Initiative Group and others all raise concerns. The principal areas of concern are the potential for the proposal to cause disturbance due to noise and nuisance on account of dust [9.6; 10.5ff; 11.8]. Health issues are also a major source of concern [9.7; 10.8; 10.12; 11.4ff; 12.4]. Wider concerns include the possibility of subsidence affecting nearby houses, the impact on local watercourses and the potential cumulative effects of other development proposals [9.4; 9.9; 10.12; 10.14].
- 13.33 Dealing first with the question of noise, this matter was examined in the ES and is covered by a statement of common ground. There is no dispute that levels from the works would not exceed those set down for minerals workings in *MPG11*; indeed the predictions show that during the period when the baffle mounds are constructed noise levels should be well below the $70\text{dB}_{\text{A}_{\text{leq},1\text{hr}}}$ limit set by the agreed condition [5.3]. Notwithstanding this, the background noise levels at the edge of the Castle Park estate are low and there is no doubt that the works would be clearly audible [5.2; 10.7]. To my mind, however, there is no evidence to suggest that the living conditions of local residents would be materially harmed, given the safeguards afforded by the agreed conditions governing noise levels and those governing the permitted hours of working.
- 13.34 Dust is similarly covered by a statement of common ground. This concludes, firstly, that residents could suffer a very slight, but measurable impact due to fugitive dust during the construction of the baffle mounds and when works are in progress in the Heritage Conservation Area. The time taken to complete these operations would be relatively short, however, and the agreed statement records that during the main coaling phase the greater distance between the working area and the houses would be likely to provide sufficient protection [5.7]. With appropriate mitigation, which would be required by condition, the risk of release of significant amounts of fugitive dust is considered to be minor [5.8]. Whilst the residents are clearly concerned [10.9], there is no evidence to suggest that their fears of significant dust nuisance would be realised.
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- 13.35 As to particulates, the statement of common ground recognises that the proposal would result in the local community being exposed to increased levels of particulates, measured as PM₁₀ [5.9]. Clearly this would be undesirable, particularly having regard to the poorer than average levels of health in the local population [9.7; 11.5; 12.4]. Notwithstanding this, the agreed calculations show that the current Air Quality Standards and the new Air Quality Objectives are unlikely to be breached [5.13 to 5.18]. Accordingly, having regard to the COMEAP recommendations [5.10], I take the view that only limited weight should be afforded to objections on account of the likely increase in particulate levels.
- 13.36 In reaching this conclusion, I have noted the representations made by the Merthyr Tydfil Anti Opencast Campaign [12.4]. They question the validity of the “Newcastle Study” and provide other examples of studies that have concluded that opencast operations are detrimental to the health of the nearby population. Unfortunately, they were not represented at the inquiry and WML were not able to test their evidence in cross-examination. This reduces the weight which it can be afforded. Also WML provided a comprehensive rebuttal to this evidence [6.14].
- 13.37 Turning to the effects on watercourses, hydrology and hydrogeology, this is again covered by a statement of common ground [5.19 ff]. It was prepared by a well-respected firm of consulting engineers and appears to me to be a comprehensive and competent piece of work. Whilst various concerns were expressed by local residents regarding the potential for the proposals to harm local watercourses and groundwater, [9.4; 10.12], I have no reason to believe that their fears would be realised. Neither is there any evidence to indicate that changes in the hydrogeological regime would affect the stability of nearby houses. My conclusions in this regard are reinforced by the lack of any objection to the proposals from the Environment Agency [12.17].
- 13.38 As to cumulative effects [9.9; 10.14], it is my understanding that the Trago Mills development is some 700m east of the appeal site and that the major earthmoving planned for that site is likely to be completed before the earliest date at which earthworks on the appeal site could commence. The Mynydd Aberdare proposal is, as I understand it, located to the south and west of the appeal site. Accordingly, it would be around 1km from Castle Park. At the time of the inquiry it did not have planning permission.
- 13.39 Objections were also made regarding loss of access to the appeal site. I have no doubt that residents do walk on the tracks that cross the site. However, none are registered as legal rights of way [2.8]. Also, objections have been lodged to the site’s inclusion on the Provisional Map of Open Access Land [6.42]. Accordingly, whilst the proposal would necessarily result in access being curtailed, this should not in my view count against it.
- 13.40 It follows from my conclusions on the above that, in my opinion, the effects of the development would not be such as to infringe residents’ human rights, including their right to the peaceful enjoyment of their property. Also, whilst some residents are understandably concerned regarding the proposal’s effect on property values, there is no substantial evidence to suggest that these would be significantly affected.
- 13.41 As to the health effects, I acknowledge that proposals of this nature inevitably cause some anxiety and stress for local residents, which can affect their health. This is a

material planning consideration. However, having regard to the protection that would be afforded to residents' amenities by the agreed conditions and the lack of objective evidence to show that their living conditions would be materially harmed, it is my view that only limited weight should be attached to these concerns.

Conclusion on the First Issue

- 13.42 In conclusion on the first issue, I find no reason to refuse planning permission for the proposal on account of the effect that it would have on the living conditions of nearby residents or on account of its impact on the water environment. There is no evidence to suggest that the risk of nearby houses subsiding would be increased or that residents' human rights would be infringed. Whilst particulate levels would be increased by the opencast operations, and some residents' health might be affected by anxiety and stress caused by the development, it is my view that, having regard to the evidence available to me, only limited weight should be attached to the objections on this account.
- 13.43 I nonetheless find that, in the short term, the biodiversity of the site would be prejudiced, albeit that this would not be compromised in the longer term. The proposal would also result in a moderate impact to the historic landscape.
- 13.44 Policy GR1 in the Local Plan requires the developer to undertake site investigations to establish the exact nature and scale of the reclamation and treatment works required, having regard, amongst other matters, to the need to retain features of wildlife and historic interest. Here, there is no dispute that the investigations were adequate. The design was formulated well before many of the investigations were complete, however, and subsequent modifications to that design consequent upon the findings of the investigations were modest. As far as I can see, no serious consideration was given to any scheme other than one based on opencasting; also it would appear that proposals for reducing the size of the overburden mound were not investigated until part way through the inquiry [8.31 and 8.32]. The alternative scheme then presented was not pursued, despite an indication that WML's view was that it would reduce the impact on the features of interest. Alternative coal recovery schemes, affecting a reduced site area, also appear not to have been considered.¹
- 13.45 To my mind the approach taken to "establishing the exact nature and scale of the works required" was flawed insofar as non-opencast options and options involving a reduced scale of working were not seriously investigated or not pursued. Whilst it is not for me to judge the outcome of any alternative proposal that might have been considered, it is plain that other reclamation options could reduce the level of impact on matters of acknowledged importance that I have identified. In these circumstances, I can only conclude that the proposal is contrary to policy GR1 of the adopted Local Plan.

¹ In making this comment I do note that an earlier opencast scheme was previously jointly promoted on this site by WML and the Council. A planning application was submitted, but subsequently withdrawn. However, the area proposed for opencasting in that scheme was significantly larger than that now proposed.

Issue 2 - The Planning Balance

Introduction

- 13.46 I turn therefore to consider whether, notwithstanding my above conclusion, there are other material considerations which would indicate that planning permission ought to be granted. This represents, in effect, the planning balance. It embraces consideration of whether the proposal is “sustainable” and, in particular, how it performs against the four objectives for sustainable development set out in *PPW*.

The Harm

- 13.47 As I see it, the principle harm would be that identified above and summarised in paragraphs 13.42 to 13.45.
- 13.48 Other harm that has been cited includes visual impact. The Brecon Beacons National Park Planning Committee resolved to object to the proposals on the grounds that they would have a significant visual impact when viewed from the National Park boundary [12.18]. This was contrary to their officer’s recommendation, however, and no further explanation was given. As to whether harm would indeed result, there is no doubt that the workings would be widely visible from higher ground in and around Merthyr Tydfil, including from the footpaths crossing the Cil Sanws golf course and other areas of higher ground in the National Park. They would also be seen from some open, but lower, areas in the town, including the grounds of Cyfarthfa Castle. The visual impact would be temporary, however, and from these more distant viewpoints the workings would impinge on a relatively small sector of the wider landscape. In the longer term there would be a minor benefit.
- 13.49 From most closer viewpoints surrounding the site, the opencast workings would be partly or wholly screened by the spoil mounds which would remain on the lower parts of the site, and the proposed soil storage mounds. Impact would accordingly be limited. However, the overburden mound would be clearly visible and prominent from the A456(T).

The Benefits

- 13.50 The first, and primary, benefit is that reclamation would be achieved, in furtherance of the clear development plan objectives [6.7]. But what weight should this attract? What would the restoration achieve? In this regard it seems to me that the actual benefits would be only modest in comparison to the alternative “Do Nothing” option for the reasons given below.
- 13.51 Firstly, it is common ground that there would be no improvement in the agricultural value of the land. It is currently of low (Grade 5) agricultural value and this would not be improved [9.1]. Following restoration, the site would be suitable only for low intensity grazing as at present. Any other use, or attempts to improve its agricultural value, would be likely to decrease its habitat value.
- 13.52 At the inquiry it was suggested that the beneficial use of the land might be “nature conservation” [8.25]. If this line is taken, it seems to me that the benefits would still be only modest. I accept that the habitat would be restored, and potentially improved, by

the proposed ecological management and aftercare regime. In contrast to this, if matters continue as at present (the “Do Nothing” option) then the site’s habitat value would, in all probability, slowly degrade [6.28]. Financial assistance to the landowner to encourage environmentally sound farming practices may prevent this, but here is no guarantee that it will be available. Equally, there is no guarantee that the financial incentives necessary to maintain the site’s habitat value at the end of the aftercare period will be available [8.28]. If they are not, then the benefits achieved in the aftercare period could be rapidly eroded by unsympathetic farming practices.

- 13.53 One benefit that would result is that the land would be tidied. Fly tipping would be removed (although this is not extensive), and many of the visible scars of the more recent opencast and quarrying operations would be treated and the land restored. However, the area of land benefiting would be confined to the higher parts of the site. The relics of mining on the lower, and more visible, parts of the site would remain essentially unaltered. Ironically, it is this part of the site that the Local Plan identifies as a priority area for reclamation [8.21].
- 13.54 A further benefit claimed is that safety would be improved by the treatment of crown holes, adits etc. Clearly safety is important. However, the public do not have a legal right of access to the site and there is no evidence that the responsible authorities are concerned regarding its present safety condition. In any event, the works required to remedy any unsafe areas on the site would be minimal in comparison to the opencasting proposed [8.43].
- 13.55 Turning now to the secondary benefits, there would be a clear and obvious benefit in terms of employment generation. 35 full-time jobs would be created on the site for the duration of the works, many of which would be likely to be taken by local people. WML have also indicated that, if the scheme proceeds, 10 additional jobs for apprentices would be created. Further indirect employment would also be generated, for example for hauliers, and the injection of spending power into the local economy would have a secondary “multiplier effect”. WML’s estimate that in all some 70 jobs would be created was not challenged. Clearly, this would be beneficial, particularly having regard to the higher than average unemployment in the area.
- 13.56 A further secondary benefit would come from mining the coal. Whilst some suggested at the inquiry that there may not be a market for the coal [10.23], it seems to me that WML would be unlikely to proceed with the scheme, and to have invested considerable effort in its promotion, if they were not confident of its viability. I accordingly take the view that the coal would be sold, with, in all probability, the majority going to Aberthaw. The remainder would go to, and be welcomed by, the steam heritage market. Whilst the site would supply only a small proportion of the coal required by Aberthaw [8.39], it seems fair to assume on the evidence available that that supplied would displace a similar quantity of imported coal. This would reduce the country’s dependence on imported coal and improve the balance of payments [6.5]. Extracting the sandstone for local sale whilst the coal is being mined is clearly sensible.

The Balance

- 13.57 Turning to the balance, the proposal would provide clear benefits in terms of job creation, and in terms of the coal and sandstone produced which would benefit the local and wider UK economies. This would further the objectives of ensuring a prudent use

of natural resources and maintaining high and stable levels of economic growth. It would also bring benefits in terms of achieving the restoration of those areas of the site damaged by the more recent opencast and quarrying operations. This would further the objective of protecting the environment.

- 13.58 On the other hand, the agricultural value of the land would not be improved and, whilst the management and aftercare proposal would bring some ecological benefits, there is no guarantee that they would be enduring. Also, the potential for longer-term habitat benefits needs to be balanced against the significant loss of habitat that would result when the works are in progress. To my mind, the overall position on this account is broadly neutral. I take a similar position with regard to visual impact of the proposals: short-term impacts would occur, but these would be balanced by modest longer-term benefits.
- 13.59 There would, however, be a clear disbenefit in terms of the impact that the proposal would have on the historic landscape. This would be contrary to the objective of protecting the environment.
- 13.60 As to the balance, the factors are fundamentally different in nature. In essence, harm to the historic landscape has to be balanced against economic benefits and the benefits arising from removing the visible scars of the more recent opencast and quarry workings, with other smaller impacts and benefits on either side of the scales. Inevitably the weight attached to each factor will differ from person to person. The economic benefits would be mainly short-term, however, whilst the harm to the historic landscape would be permanent. The benefits accruing from reclamation of the quarry and opencast workings could also potentially be achieved with less harm to the historic environment (see paragraphs 13.44 and 13.45 above). Accordingly, taking all factors into account, it is my judgement that the balance falls against granting planning permission.
- 13.61 Matters have clearly moved on since the development plan was drawn up, insofar as the site's nature conservation value and historical landscape value has now been recognised. Notwithstanding that the development plan favours reclamation, it is my view that, overall, it would be preferable to leave the site in its present condition (the "Do Nothing" Option) than to grant planning permission for the appeal proposal.

Overall Conclusion on the Planning Merits

- 13.62 In conclusion, I find the proposal contrary to the development plan, for the reasons given above. To my mind the material considerations that favour the grant of planning permission are not such as to indicate a decision other than in accordance with the development plan. I shall therefore recommend, having regard solely to the planning merits, that the appeal be dismissed.

Legal and Procedural Matters

- 13.63 I turn now to the legal and procedural matters raised at the inquiry.

Compliance with the EIA Regulations

- 13.64 This matter was raised by the Council [8.2-8.16]. They argue, in summary, that the ecological information contained in the Environmental Statement is inadequate and does not fulfil the requirements of the EIA Regulations. Because of this they submit that it would be unlawful for the Assembly to grant planning permission.
- 13.65 In relation to the adequacy of the ecological information, there is no dispute that the information contained in the ES as deposited with the application was inadequate [8.8; 6.46]. However, further information was supplied both before the Council determined the application and subsequently in response to a request from the Assembly. Additional information (over and above the further information referred to above) was also provided in the proofs of evidence and elsewhere for the inquiry. It is agreed that this information, in its totality, is adequate to inform the biodiversity of the site [5.32]. As I see it, the dispute thus turns on whether that information which should rightly be regarded as part of the ES (but excluding that information available to the inquiry which should not rightly be regarded as part of the ES) fulfils the requirements of the Regulations.
- 13.66 The definition of “environmental statement” is found in Part 1 of the Regulations. This states:
- “environmental statement” means a statement –
- (a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part II of Schedule 4.
- 13.67 Referring to Schedule 4, the relevant requirements are that the ES must contain, at least:
- The data required to identify and assess the main effects which the development is likely to have on the environment,
- together with, so far as is reasonably required:
- A description of the aspects of the environment likely to be significantly affected by the development including, in particular, ...fauna, flora, soil, water, air, ...and the inter-relationship between the above factors; and
- A description of the likely significant effects of the development on the environment..... resulting from the existence of the development....
- 13.68 In deciding whether the information available meets the requirements, it is first necessary to settle which information should rightly be regarded as part of the ES. In this regard the Council argue, and WML did not seek to dispute, that this comprises the information contained in the original ES (CC1) and that provided subsequently to the Council (CC4, CC5 and CC6) and to the Assembly in response to their Regulation 19 Request (CC23) [8.8-8.9; 6.47].
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- 13.69 Additional information before the inquiry included various updating surveys undertaken by Mr Pryce in 2003 (CC13-17); the information contained in his proof and appendices (WML3) and the information contained in Dr Hill’s proof and appendices (MTCBC2). Dr Hill’s appendices included Mr Pryce’s Ecological Survey Report of September 1999, and an analysis of differences between the wording of that report and that in WML’s “Review of the Ecological Value of the land encompassed by the Scheme, having particular reference to opportunities for restoration” (CC5).
- 13.70 The Council’s main criticisms relate to the differences between Mr Pryce’s Survey Report and the WML Review. Superficially they are very similar and the wording is, in many places, identical. But there are differences. Some are not material. However, some of the information contained in Mr Pryce’s report has been omitted from the WML report, notably a section on Skylarks. Also, in several areas, passages of text have been omitted or changed.
- 13.71 The person responsible for the preparation of the WML report was not present at the inquiry and therefore could not be questioned. However, Mr Pryce was, and he conceded that the alterations appeared to have been an attempt to play down the ecological significance of the site; that it omitted matters of significance; and that it was unprofessional and misleading [8.10]. Having subsequently compared both documents, and reflected on the matter, I agree.
- 13.72 To my mind, this is a very serious matter. Anyone reading an ES has a right to expect that it has been professionally prepared. Plainly, it should not be misleading. In presenting misleading information, when information that was not misleading was in their possession¹, it is my view that WML failed to provide an ES that “includes such of the information..... as is reasonably required to assess the environmental effects of the development and which the applicant can.....reasonably be required to compile”. The misleading information concerned the description of the flora and fauna. As such, it is squarely within the scope of the information required by the Regulations. In my opinion, the failing is fundamental. As Mr Palmer put it, an ES (taken with the further information) must be adequate before it can be considered to be an ES [8.5].
- 13.73 The matter, moreover, was not corrected by the further information supplied in response to the Assembly’s request. Indeed it was not corrected until Dr Hill’s proof was submitted. Even then, the fault was not acknowledged by WML [8.11]. Accordingly, whilst I am satisfied that the ecological information before the inquiry was adequate, I am not so satisfied that the information on which consultees and others would have relied (namely the ES with the further information supplied) was so adequate. Furthermore, to admit the information contained only in an Appendix to Dr Hill’s evidence as part of the ES, without proper notice or advertisement would, to my mind, run counter to the principle established by the House of Lords in *Berkley* [8.2; 8.3].

¹ Namely the Pryce Ecological Survey Report.

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- 13.74 It follows from this that if the Assembly were to grant planning permission for the development, without first rectifying this defect, then they could be at risk of a legal challenge.¹

Changes to the Application

- 13.75 This matter was raised by the Castle Park Residents Association. They argue in effect that changes to the scheme since it was considered by the Council have been such that a new planning application should be required if WML wish to proceed. They point particularly to changes in the restoration strategy [10.18].
- 13.76 I reject that argument. Whilst I acknowledge and accept that there have been changes all are, to my mind, minor in nature. No fundamental elements of the scheme were changed. The restoration strategy was refined but the intention to restore the site having due regard to its ecological and biodiversity value was plain from the restoration strategy supplied in the first batch of further information (CC6). In my opinion, no-one was prejudiced by the changes that were subsequently promoted, either individually or collectively.
- 13.77 My conclusions in this regard are reinforced by the lack of any similar objection from the Council. They were clearly alive to such an issue, having promptly and firmly resisted WML's suggestion, made during the course of the inquiry, that the configuration of the overburden mound should be changed [1.5]. They did not, however, raise any similar issues with regard to the modifications proposed between the scheme as considered by the Council and that before the inquiry.

The Great Crested Newt

- 13.78 The Great Crested Newt (*Triturus cristatus*) is a European protected species. Under regulation 39 of the Conservation (Natural Habitats, &c.) Regulations 1994 it is an offence to deliberately disturb capture or kill it or to damage or destroy its breeding site or resting place, except as provided for by regulation 40 and except for actions licensed under regulation 44.
- 13.79 It is common ground that Great Crested Newts are present on the site and that they breed in several of the ponds that would be lost if the proposal proceeds. A derogation (in the form of a licence) would therefore be required to permit their trapping and relocation before the development could proceed. This is not in dispute. Responsibility for issuing these licences rests with the National Assembly. At the present time, the licensing process is separate from the planning process, although the National Assembly has indicated in Circular 23/01 that they intend to introduce legislation requiring local planning authorities to take decisions about derogations from the species protection provisions alongside planning decisions.

¹ Notwithstanding this there would seem to be a remedy, should the Assembly agree with me on this point but disagree with me on the merits of the proposal and wish to grant planning permission. There is no dispute that the required information is available. The problem is simply that it is not in the ES. This can be remedied by the issue of a Regulation 19(1) request for further information and re-opening the inquiry [6.50].

- 13.80 Whilst the licensing and planning regimes are separate, authorities are under a duty to have regard to the requirements of the Directive in exercising their functions. *PPW* also makes it clear, at paragraph 5.5.12, that planning authorities should take the requirement for a derogation into account when determining planning applications in order “to avoid developments with planning permission subsequently not being granted a derogation in relation to a European protected species”. To my mind, the intention is clear: as a matter of policy, planning permission should not be granted for developments for which a derogation would not also be granted. Where the body exercising the planning function and the licensing function are one and the same, as here, it seems to me that the weight attached to a development’s ability or otherwise to satisfy the criteria for a licence as a material consideration in determining the planning application must be all the more substantial.
- 13.81 I turn then to the requirements for a licence. These are contained in the Habitats Regulations. In order for a licence to be issued, two tests need to be satisfied. It has to be for a purpose referred to in paragraph 44(2) and the authority has to be satisfied that it meets the tests in paragraph 44(3). *WML* rightly point out that the requirements are separate [6.30].
- 13.82 Looking first at 44(2), the relevant purposes include “(c) conserving wild animals...or introducing them to particular areas” and “(e) preserving public health or safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”. *WML* argue that the proposal would qualify under either if the totality of the evidence is considered [6.30].
- 13.83 I disagree. On the first, I acknowledge that the proposed mitigation would be such that the population of Newts would not be harmed and would potentially even increase if the proposal were permitted [6.28]. However, to my mind, that is not the test set in regulation 44. To satisfy the test, the “purpose” for which the licence is granted has to be “conserving wild animals....”. In this case, it seems to me that the purpose is not to conserve the Newts; rather it is to achieve reclamation of the land by opencasting. If the purpose were to conserve the Newts (as opposed to avoiding them being harmed by the proposed opencast works) then some much simpler and less risky measures would suffice – eg restoration of breeding ponds; removal of fish from the ponds and provision of additional ponds and refugia. Trapping and relocation of the Newts would not be required: other better alternatives would be available to secure the purpose.
- 13.84 On the second, I reject any suggestion that the licence would be required for the purpose of “preserving public health and safety”. Whilst crown holes and the like would be made safe as part of the works, this would clearly not require interference with the Newts on the scale proposed.
- 13.85 That leaves “imperative reasons of overriding public interest....”. It is a stiff test. It does not require simply that, on balance, the proposals are in the public interest. The reasons (which can include social and economic reasons) have to be imperative reasons of overriding public interest. Whilst I accept that the proposal would bring economic and other benefits to a disadvantaged area, as I recognise above, it is nonetheless my firm view that the proposals fall woefully short of satisfying that test.
- 13.86 I therefore conclude that there is no legitimate purpose for a licence to be granted.
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- 13.87 Should the Assembly disagree on this point, then it is necessary to look at the further test set by regulation 44(3), which also has to be satisfied before a licence can be granted. This requires “(a) that there is no satisfactory alternative and (b) that the action authorised will not be detrimental to the maintenance of the population....” There is no dispute that the second part of the test would be satisfied. The Council also did not take issue on the first part, noting simply their view that the works cannot be undertaken without a derogation [8.47].
- 13.88 I indicated at the time that I was uneasy as to whether this interpretation of the regulations was correct and, having considered it further, I remain doubtful on this point. It is a matter of law, but it seems to me that a plainer interpretation of “alternative” is not whether there is an alternative to issuing a derogation but whether there is an alternative way by which the qualifying purpose in 44(2) could be satisfied.¹ In this case, I conclude that there is no qualifying purpose, so the question is academic. However, should the Assembly disagree with me on the question of purpose, then it is my view that they would also have to be satisfied that the purpose relied on could not be satisfactorily met in some alternative way before a licence could rightly be granted.
- 13.89 To my mind, there is no reasonable prospect of the requirements of the Regulations being fulfilled. As such, I take the view that, as a matter of policy, planning permission should not be granted.

Overall Conclusion

- 13.90 In conclusion, I find that the proposal would be contrary to the development plan. Since I also find that there are no material considerations that would indicate a decision other than in accordance with the plan, I take the view that the appeal should be dismissed on its planning merits.
- 13.91 On the legal and procedural matters raised, I conclude that the Environmental Statement is not adequate.
- 13.92 I further conclude that the proposal would affect a European protected animal, namely the Great Crested Newt. A licence would be required before the Newts could be relocated. Since, in my view, there is no reasonable prospect of the requirements for a licence to relocate the Newts being fulfilled I conclude that, as a matter of policy, planning permission should not be granted.

14. RECOMMENDATIONS

- 14.1 I recommend that the appeal is dismissed.
- 14.2 In the event that the National Assembly do not concur with my above recommendation and decide to grant planning permission for the development, then I recommend that

¹ As an example, purpose (a) is for scientific or educational purposes. Trapping might well be justified under those provisions, if the protected animals trapped were to be studied. Plainly, though, if an alternative animal could be studied with equal effect, or, alternatively, if the protected animals could be studied with equal effect without disturbing them, then the grant of a licence would not be justified.

conditions should be attached to any permission granted along the lines of those set out in Appendix D.

A handwritten signature in black ink that reads "A. T. Phillips". The signature is written in a cursive style with a long horizontal stroke extending to the right from the end of the name.

Inspector

APPENDIX A - APPEARANCES
FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Palmer, of Counsel Instructed by RPS Planning, Transport and Environment,
Park House, Greyfriars Road, Cardiff CF10 3AF.

He called

Dr David Hill BSc(Hons) DPhil(Oxon) CBiol MIBiol FIEEM.	Director of Ecology, RPS Ecoscope Applied Ecologists and RPS Group
Mr Ken Whittaker BSc(Hons) MIFA.	Director of Archaeology, RPS Planning, Transport and Environment
Mr Lyn Powell BSc(Hons) DipTP MRTPI FRSA.	Planning Director, RPS Group

FOR THE APPELLANT:

Ms Morag Ellis, of Counsel Instructed by Hugh James Solicitors, Hodge House, 114-
116 St Mary Street, Cardiff, CF10 1DY

She called

Mr Huw Richards HND AMIQ	Director, Walters Mining Ltd
Ms Mary O'Connor DipLA MSc MLI	Director, Wyn Thomas Gordon Lewis Ltd
Mr Andrew Marvell BA(Hons) MIFA	Acting Director, Glamorgan Gwent Archaeological Trust Ltd
Mr Richard Pryce BSc CBiol MIBiol MIEEM FLS	Ecological Consultant and Partner, Pryce Consultant Ecologists
Mr Graham Jenkins BA(Hons) MRTPI MIQ	Director, Wyn Thomas Gordon Lewis Ltd

INTERESTED PERSONS:

Miss Alison Chaplin	Castle Park Residents Association, 10 Chepstow Close, Castle Park, Merthyr Tydfil, CF48 1JG
Mr Ron Baker	Castle Park Residents Association, 14 Monmouth Drive, Castle Park, Merthyr Tydfil, CF48 1JA
Cllr Alan Baynham	18 Bryn Taf, Cefn Coed, Merthyr Tydfil, CF48 2PD

Cllr Les Elliot	40 Heol Tai Mawr, Gellideg Estate, Merthyr Tydfil, CF48 1NF
Cllr Leon Stanfield	1 St Johns Close, Cefn Coed, Merthyr Tydfil, CF48 2PE
Mr Anthony Chaplin	Merthyr Initiative Group, 21 Monmouth Drive, Castle Park, Merthyr Tydfil CF48 1JA.
Mrs Jennie Jones	19 Llwynceilyn Close, Ynysfach, Merthyr Tydfil, CF48 1AH
Mr Manus Malloy	1 Durham Close, Shirley Gardens, Heolgerrig, Merthyr Tydfil, CF48 1SL

APPENDIX B - DOCUMENTS
General Documents

Document	G1	Lists of persons present at the inquiry
Document	G2	Council's letters of notification and other publicity advertising the appeal
Document	G3	Bundle of letters received in response to the above

Common Core Documents

Document	CC1	Planning Application, Supporting Information and Environmental Statement
Document	CC2	Non Technical Summary of the Environmental Statement
Document	CC3	Proposed Reclamation at Winch Fawr West, Merthyr Tydfil: historic landscape character study. GGAT Report no 2000/068 (the Lawler Report)
Document	CC4	Winch Fawr West Reclamation Scheme: Translocation of Great Crested Newts – An Indicative Strategy – Walters Mining Ltd
Document	CC5	Winch Fawr West: A Review of the Ecological Value of the land encompassed by the Scheme having particular reference to opportunities for Restoration – Walters Mining Ltd, June 2001
Document	CC6	Winch Fawr West: Reclamation Scheme – Restoration Strategy - Wyn Thomas Gordon Lewis, June 2001
Document	CC7	Ecological Survey Report - 1998 Herpetile Survey Results abstracted from main report, May 1999
Document	CC8	Ecological Survey Report, Sept 1999
Document	CC9	Great Crested Newt Habitat Review in the Western Vicinity of the Site, December 2000
Document	CC10	2001 Amphibian Survey, May 2001
Document	CC11	2002 Amphibian Survey, September 2002
Document	CC12	Survey to Identify Possible Locations for Amphibian Mitigation Ponds, May 2003
Document	CC13	Breeding Bird and Terrestrial Invertebrate Surveys Report, August 2003
Document	CC14	2003 Amphibian Survey Report, August 2003
Document	CC15	Bryophytes and Lichens Survey Report, June 2003
Document	CC16	Reptile Survey 2003, November 2003

Document	CC17	Assessment of Bat Interest and Other Protected Mammals, November 2003
Document	CC18	Context and Significance of Habitats and Species Recorded within the site, November 2003
Document	CC19	Statement of Common Ground - Noise
Document	CC20	Statement of Common Ground - Air Quality
Document	CC21	Statement of Common Ground – Hydrogeology and Hydrology
Document	CC22	Statement of Common Ground – Ecology
Document	CC23	Response to request for further information by the National Assembly for Wales, May 2003
Document	CC24	Non technical summary of response to request for further information by the National Assembly for Wales, May 2003
Document	CC25	Grounds of Appeal
Document	CC26	Planning Permission and Conditions Granted by Rhondda Cynon Taff County Borough Council
Document	CC27	Notice of Refusal
Document	CC28	Planning Manager’s Report to the Special Planning & Licensing Committee, 3 December 2001
Document	CC29	Minutes of the Special Planning and Licensing Committee, 3 December 2001 (SPLC031201RW)
Document	CC30	Report PL1302PM6 by A N Davies dated 4 February 2002
Document	CC31	Appellant’s Rule 6 Statement
Document	CC32	Council’s Rule 6 Statement
Document	CC33	Letter from RPS to Hugh James Solicitors dated 30 October 2003
Document	CC34	Merthyr Tydfil Borough Local Plan (Adopted May 1999)
Document	CC35	Mid Glamorgan (Merthyr Tydfil County Borough) Replacement Structure Plan 1991 - 2006 (Adopted August 1996)
Document	CC36	Countryside Strategy Action Programme 1999 - 2002
Document	CC37	Countryside Strategy 1997 – 2002
Document	CC38	Merthyr Tydfil Unitary Development Plan 2000 - 2015 (Pre Deposit Consultation and Issues Report, July 2000)
Document	CC39	Action for Wildlife in Merthyr Tydfil – The Merthyr Tydfil Biodiversity Action Plan 2002 - 2007 Adopted Version
Document	CC40	Merthyr Tydfil LANDMAP (Final Report, August 2002)

Document	CC41	Planning Guidance (Wales) Planning Policy (First Revision), April 1999
Document	CC42*	Minerals Planning Policy Wales, December 2000
Document	CC43*	Annexes to Mineral Planning Guidance: Coal Mining and Colliery Spoil Disposal (MPG 3)
Document	CC44*	Minerals Planning Guidance: The Reclamation of Mineral Workings (MPG 7)
Document	CC45*	Minerals Planning Guidance: The Control of Noise at Surface Mineral Workings (MPG 11)
Document	CC46*	Mineral Planning Guidance: Treatment of Disused Mine Openings and Availability of Information on Mined Ground (MPG 12)
Document	CC47*	Technical Advice Note (Wales) 5: Nature Conservation and Planning
Document	CC48*	Technical Advice Note (Wales) 11: Noise
Document	CC49*	The Town and Country Planning Act 1990
Document	CC50*	The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
Document	CC51	Register of Landscapes of Outstanding Historic Interest in Wales (Part 2.1)
Document	CC52*	Planning Policy Wales (March 2002)
Document	CC53	Guide to Good Practice on using The Register of Historic Landscapes of Historic Interest in Wales in the Planning and Development Process
Document	CC54	Iron Ore Scours and Patch Workings at Winch Fawr, Merthyr Tydfil, GM 554 (MER) - Entry in the Schedule of Ancient Monuments
Document	CC55*	Planning Policy Guidance: Archaeology and Planning (PPG 16) – now withdrawn and replaced by PPG Wales and W/O Circular 60/96
Document	CC56	Great Crested Newts: A Guide for Developers
Document	CC57	Schedule of ecological works and costings
Document	CC58	Bundle of consultation responses from the Environment Agency
Document	CC59	Draft Conditions (see MTCBC6)

Note: Documents marked with a * are not included in the bundle of documents.

Documents Submitted by the Appellant

Document	WML1	Mr Richards' proof of evidence and appendices
Document	WML2	Mr Richards' summary

Document	WML3	Mr Pryce's proof of evidence and appendices
Document	WML4	Mr Pryce's summary
Document	WML5	Mr Marvell's proof of evidence and appendices
Document	WML6	Mr Marvell's summary
Document	WML7	Ms O'Connor's proof of evidence
Document	WML8	Ms O'Connor's documents
Document	WML9	Ms O'Connor's summary
Document	WML10	Mr Jenkins' proof of evidence
Document	WML11	Mr Jenkins' documents
Document	WML12	Mr Jenkins' summary
Document	WML13	Revised Masterplan - WFW\PI\MP.A
Document	WML14	Historic landscape characterisation: Merthyr Tydfil Part 1 and Part 2: landscape characterisation and management - R Roberts (GGAT Report No 2003/009)
Document	WML15	Winch Fawr West Reclamation Scheme: historic landscape assessment (ASIDOHL) - R Roberts (GGAT Report No 2004/006)
Document	WML16	Uplands Survey Project: West Merthyr Tydfil (Cambrian Archaeological Projects Report No 119)
Document	WML17	Dwg No. WFW\PI\AP.A - Aerial Photograph annotated to show area of Phase 2 workings on northern side of site to be protected within Geotextile Membrane
Document	WML18	Article regarding Parc Slip Nature Reserve - Rural Wales
Document	WML19	Letter from the RSPB dated 18 July 2000
Document	WML20	Letters from the National Assembly for Wales (NAW) dated 17 February 2003 and 20 June 2003
Document	WML21	Dwg No WFW\PI\LPD.A Aerial photo annotated to show Local Plan Designations DL4 and DL5 and site boundary
Document	WML22	Letter from Neath Port Talbot County Borough Council dated 30 January 2004
Document	WML23	Letter from the Welsh Development Agency (WDA) dated 4 February 2004
Document	WML24	Bundle of historic Ordnance Survey Plans
Document	WML25	Extracts from "Habitat Creation – A Critical Guide" – D M Parker (see also MTCBC/9)

Document	WML26	Extracts from “Habitat Creation and Repair” – Gilbert and Anderson (see also MTCBC/7)
Document	WML27	Opencast Coaling and Ecology in the South Wales Coal Field - Philip Horton (Opencast Mining 1994)
Document	WML28	Plan and photographs of Winch Fawr West and photographs of habitat creation/restoration works at Cwmbargoed and Nant Helen, supplied by Mr Pryce
Document	WML29	Mr Pryce’s table 9.5, revised to take account of proposal to reduce the size of the overburden mound
Document	WML30	Section through the site showing the location of the Garw Seam and proposed depth of working
Document	WML31	Note on ecological benefits and disbenefits of the scheme, prepared by Mr Pryce
Document	WML32	Letter from the RSPB dated 3 May 2000
Document	WML33	Letter from WML to MTCBC dated 29 September 2000
Document	WML34	Note on the impact of Winch Fawr West on Welsh coal production and contribution to power generation market
Document	WML35	Note on Merthyr Village, East Merthyr (Ffos-y-Fran) and Trago Mills developments , prepared by Mr Jenkins
Document	WML36	Note from Richard Pryce on trapping of Newts
Document	WML37	Note on stability and settlement of spoil overburden mounds -Terry Gordon of Arups
Document	WML38	Rebuttal Statement to Evidence by Merthyr Tydfil Anti-Opencast Campaign
Document	WML39	Closing submissions
Document	WML40	R v the London Borough of Camden ex parte Cummins
Document	WML41	R v Cornwall County Council ex parte Hardy

Documents Submitted by the Council

Document	MTCBC1	Mr Powell’s proof of evidence
Document	MTCBC2	Dr Hill’s proof of evidence
Document	MTCBC3	Mr Powell’s appendices
Document	MTCBC4	Provisional CROW map
Document	MTCBC5	Mr Whittaker’s proof of evidence

Document	MTCBC6	Suggested conditions (Seventh Draft 12-02-04)
Document	MTCBC7	Extracts from “Habitat Creation and Repair” – Gilbert and Anderson (see also WML/26)
Document	MTCBC8	Extracts from “Habitat Creation Handbook for the Minerals Industry” – RSPB
Document	MTCBC9	Extracts from “Habitat Creation – A Critical Guide” – D M Parker (see also WML/25)
Document	MTCBC10	Wildlife and Mining in the Yorkshire Coalfield – J Lunn
Document	MTCBC11	R v Cornwall County Council ex parte Hardy and appeal decisions, including “Durham”
Document	MTCBC12	Maps showing adopted and candidate SINCs in the Borough of Merthyr Tydfil
Document	MTCBC13	See Plan E
Document	MTCBC14	Extract from Merthyr Tydfil LANDMAP Strategy, relating to Character Area 11
Document	MTCBC15	Plan showing location of plates appended to Mr Whittaker’s proof.
Document	MTCBC16	Letter from MTCBC dated 10 February 2004, regarding amended scheme proposals
Document	MTCBC17	E-mail from Nigel Ajax-Lewis dated 30 January 2004
Document	MTCBC18	Note on costings for Great Crested Newt translocation, included in CC57
Document	MTCBC19	Letter from MTCBC dated 12 February 2004, relating to SINCs and funding for their management
Document	MTCBC20	Closing submissions
Document	MTCBC21	Berkeley v Secretary of State for the Environment and Others
Document	MTCBC22	Burkett (R on the application of) v London Borough of Hammersmith and Fulham (2003)

Other Documents

Document	CPRA(obj)/1	Miss Chaplin’s statement
Document	CPRA(obj) /2	Mr Baker’s statement
Document	CPRA(obj)/3	Extracts from Health, Social Care and Well Being – An Assessment for Merthyr Tydfil
Document	CPRA(obj)/4	Plan of Castle Park Estate, showing location of adit.

Document	CPRA(obj)/5	Castle Park Residents Association closing statement
Document	AB(obj)/1	Councillor Baynham's statement
Document	LE(obj)/1	Councillor Elliot's statement
Document	LS(obj)/1	Councillor Stanfield's statement
Document	MIG(obj)/1	Mr Chaplin's statement
Document	MIG(obj)/2	Merthyr Initiative Group's appendices
Document	MIG(obj)/3	Merthyr Initiative Group's aims and objectives
Document	MIG(obj)/4	Press cuttings relating to PPG3 and translocation of habitat for marsh fritillary
Document	MIG(obj)/5	Merthyr Initiative Group's closing submissions
Document	JJ(obj)/1	Bundle of papers put in by Mrs Jones
Document	MM(sup)/1	Mr Malloy's statement
Document	MM(sup)/2	Extract from the History of the Hamlet of Gellideg by FJ Peddlar
Document	MM(sup)/3	Extract from the Historic Taf Valleys by Merthyr Tydfil & District Naturalists Society
Document	MAOC(obj)/1	Bundle of documents put in by the Merthyr Tydfil Anti Opencast Campaign (treated as written representation)

PLANS

Plan	A	Application plan (included in Document CC1)
Plans	B1 to B7	Appeal plans (referred to in Condition 3)
Plans	C1 and C2	Plans and sections for revised (reduced) operational area
Plan	D	Plan showing noise monitoring locations (referred to in Condition 15)
Plan	E	Plan showing land required for Abergavenny to Hirwaun dualling (referred to in Condition 9)

PHOTOGRAPHS

Photo	A	Aerial photograph of the appeal site, showing boundaries of the site, Heritage Conservation Area and Scheduled Ancient Monument.
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APPENDIX C - ABBREVIATIONS

CCW	Countryside Council for Wales
EIA	Environmental Impact Assessment
ES	Environmental Statement
GDP	gross domestic product
GGAT	Glamorgan-Gwent Archaeological Trust Ltd
HLCA	Historic Landscape Character Area
JNCC	Joint Nature Conservation Committee
p	page
pp	pages
para	paragraph
MTAN1	Minerals Planning Policy Wales. Minerals Technical Advice Note MTAN (Wales) 1: Aggregates
MPG11	Minerals Planning Guidance: The Control of Noise at Surface Minerals Workings
MPPW	Minerals Planning Policy Wales
NAW	National Assembly of Wales
PPW	Planning Policy Wales
Reg	Regulation
SINC	Site of Importance for Nature Conservation
cSINC	Candidate SINC
TAN 5	Technical Advice Note (Wales) 5: Nature Conservation and Planning
WML	Walters Mining Ltd (the Appellant)

APPENDIX D – CONDITIONS

Note: The conditions set out below are based on those suggested by the Council (MTCBC6), with amendments where required to simplify and clarify the wording and/or bring them into line with the requirements of Circular 11/95 (see footnotes)¹. The reasons for the conditions can be found in MTCBC6. The plans required to accompany conditions 9 and 15 are included with the inquiry documents as Plans E and D.

1. The development to which this permission relates shall commence not later than the expiration of 5 years beginning with the date of this permission.²
2. Minerals extraction shall cease not later than 30 months from the date of the initial mineral extraction. Written notification of the date of commencement of minerals extraction shall be submitted to the Mineral Planning Authority 7 days before commencement.³
3. The development to which this permission relates shall be carried out strictly in accordance with Drawing Nos WFW/P1/MP.B (Masterplan); 5275/LO1; /LO2A; /LO3A; /LO4; /LO5 and /LO7A.⁴
4. From the commencement of development to completion a copy of this permission, including all documents hereby approved, and any other documents subsequently approved in accordance with this permission, shall be permanently maintained and available for inspection at the site office.
5. No development shall take place until a plan and programme of archaeological investigation, protection, conservation and recording work has been submitted to and agreed in writing by the Mineral Planning Authority. The scheme shall include:
 - a detailed topographic and photographic survey of all historic landscape features and industrial archaeological remains from the 18th 19th and 20th century Cyfarthfa Ironworks coal and ironstone workings (the “Phase 1, Phase 2 and Phase 3 features and remains”);
 - measures for the protection, conservation and enhancement of the Phase 1, Phase 2 and Phase 3 features and remains in the Heritage Conservation Area, in accordance with the principles set out in the “Response to request

¹ The Castle Park Residents Association also suggested changes to the conditions originally put forward by the Council (see CPRA(obj)/5). The substance of some of the suggestions is covered by the conditions herein. Where this is not so, it is because the condition requested is, in my view, either unnecessary or it would fail the tests in Circular 11/95.

² The Council argued that this should be extended to require the developer to give 7 days notice of commencement, in view of the number of Grampian conditions imposed. However, I see no reason for this. Should development commence in contravention of the conditions, it would be open to the Council to take appropriate action in any event.

³ The requirement for restoration to be completed within 40 months from commencement has been removed as this may be in conflict with the scheme agreed under condition 6 (eg with respect to the timing of restoration works for the lagoons). The requirement to give notice of the date of commencement of mineral extraction has been reinstated to ensure that the start date of the 30 month period is not in dispute.

⁴ Plan numbers amended as agreed at the inquiry

for Further Information by the National Assembly of Wales”, dated May 2003 (Document CC23);

- measures for the protection of the Phase 1, Phase 2 and Phase 3 features and remains identified as lying under the overburden mounds and soil storage areas shown on the approved plans, in accordance with the principles set out in the “Method Statement for sealing and re-excavating of Phase 2 Historic Landscape Features” (Annex 1 to Appendix 10 of document WML1);
- the investigation and recording of the Phase 1, Phase 2 and Phase 3 surface features and remains which would be destroyed by the works; and
- the investigation and recording of the Phase 1, Phase 2 and Phase 3 sub-surface features of the remains (adits, headings, stalls etc) which would be destroyed by the works.

The plan and programme of archaeological investigation, protection and recording work shall be implemented strictly in accordance with the approved details.¹

6. No development shall take place until drawings showing the intended contours of the final landform of the restored area together with an ecological management, restoration and aftercare plan have been submitted to and approved in writing by the Mineral Planning Authority. The plan shall cover operations during the preliminary site establishment, operational and aftercare phases. It shall include:
 - a management plan and programme of works for the Heritage Conservation Area, designed to preserve and enhance its biodiversity in a way compatible with the measures for the protection, conservation and enhancement of the Phase 1, Phase 2 and Phase 3 features and remains in the area; and
 - a management, restoration and aftercare plan and programme for the remaining areas of the site.

The plans and programmes shall make particular provision for:

- habitat restoration, creation, mitigation and aftercare measures necessary to return the site to its current SINC status;
- habitat restoration, creation and mitigation measures for protected species;
- a comprehensive landscaping scheme, consistent with the site’s biodiversity and heritage value;
- an aftercare period for a minimum of 10 years;
- supervision by a qualified ecologist, approved in writing by the Mineral Planning Authority in accordance with the provisions of condition 22;

¹ Based on the Council’s suggested conditions 5 and 6.

- remedial works necessary to restore any habitat or landscape features that do not develop as intended or are damaged, destroyed or die; and
- monitoring and review throughout the period of the works and the aftercare period.

The works, monitoring and aftercare shall be carried out strictly in accordance with the approved details, unless otherwise agreed in writing by the Mineral Planning Authority, following a review of the monitoring results.¹

7. Notwithstanding the licensing requirements under the Conservation (Natural Habitats, &c.) Regulations 1994, no development shall take place until a comprehensive scheme of mitigation measures designed to safeguard the Great Crested Newt population within the whole of the application site has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be based on the “Outline of Proposals for the Translocation of Amphibian Populations” prepared by Pryce Consultant Ecologists (Appendix 1 of Document WML3). It shall further include:

- the creation of purpose-designed Great Crested Newt hibernation areas;
- population monitoring surveys throughout the life of the scheme and aftercare period, designed to assess the effects of the scheme upon the Newt population; and
- restorative measures to ensure that Newt numbers remain stable or increase should any part of the mitigation measures be seen to fail.

The scheme of mitigation measures shall be carried out strictly in accordance with the approved details, unless otherwise agreed in writing with the Mineral Planning Authority, or otherwise instructed by the licensing authority.²

8. No development shall take place until the developer has, with a suitable guarantor, entered into a bond under Section 6 of the Mid-Glamorgan County Council Act 1997 sufficient to meet the full cost of restoration and aftercare.³
9. No excavation nor tipping shall take place within the area marked in black on the attached plan supplied by the National Assembly Highways Directorate (Ref BT1015586/416), a copy of which is enclosed with this permission.
10. Except in emergencies in order to maintain safe operation of the site (which shall be notified to the Mineral Planning Authority in writing as soon as practicable after the event) no operations, other than water pumping or servicing to water pumps or environmental monitoring shall be carried out at the site except between the following times:-

¹ Based on the Council’s suggested conditions 8, 9, 10 and 11, with revisions as discussed at the inquiry. Council’s proposed 25 year aftercare period reduced to 10 years.

² Based on the Council’s suggested condition 12.

³ Based on the Council’s suggested condition 13, with revisions as discussed at the inquiry.

a) General Operations

Monday to Fridays 07.00 - 19.00

Saturdays 08.00 - 13.00

No work to be undertaken on Sundays or public holidays.

b) Works in the Heritage Conservation Area

Monday to Fridays 08.00 - 18.00

Saturdays 08.00 - 13.00

No work to be undertaken on Sundays or public holidays.

c) Haulage Lorries

Monday to Fridays 07.30 - 16.30

Saturdays 08.00 - 12.30

No work to be undertaken on Sundays or public holidays.¹

11. There shall be no blasting on site.
12. No minerals shall be stocked on the site except within an area submitted to and approved in writing by the Mineral Planning Authority.²
13. The only minerals to be prepared, treated and stocked at the application site shall be those extracted from the site; no other mineral shall be imported to the site for any such preparation, treatment or stocking.
14. No extraction shall take place below 50m as measured from original ground level at any given point.
15. With the exception of those activities cited below, noise arising from operations shall not exceed the following levels by reference to the specific noise monitoring locations (NML) shown on the attached plan:

NML1 (Harlech Drive)	52dB _{LAeq,1 hour free field}
NML2 (Winch Fawr Road)	51dB _{LAeq,1 hour free field}
NML3 (Beacon Heights)	55dB _{LAeq,1 hour free field}

¹ Based on the Council's suggested condition 15, with revisions as discussed at the inquiry.

² Based on the Council's suggested condition 17, but revised as the Administration Area is outside the boundary of Merthyr Tydfil CBC.

NML4 (Bryn-y-Gwyddel House) 55dB_{L_{Aeq},1 hour free field}

During baffle mound construction and removal, soil stripping, and removal of spoil heaps noise levels shall not exceed 70dB_{L_{Aeq},1 hour free field} at any of the specific noise monitoring locations.

During works within the Heritage Conservation Area, noise levels shall not exceed 70dB_{L_{Aeq},1 hour free field} outside any residential property.¹

16. No development shall take place until a detailed scheme of measures to suppress dust and monitor air quality has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be based upon the specific mitigation measures included in the Statement of Common Ground (Document CC20). The measures shall be implemented in accordance with the scheme as approved.
17. No development shall take place until the limits of the operational areas have been set out on site and agreed with the Mineral Planning Authority. Thereafter the areas shall be enclosed with fencing of a type submitted to and approved in writing by the Mineral Planning Authority.²
18. No development shall take place until a lighting scheme has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall indicate the position, design, type and hours of operation of all illumination facilities to be employed at the site and the measures to be incorporated to minimise glare and nuisance. No lighting other than that approved shall be used.³
19. No development shall take place until detailed plans of the site drainage scheme have been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include permanent and temporary drainage and lagoon systems designed to intercept and treat any contaminated surface water from the application site and to prevent excessive surface water runoff. The drainage scheme as approved shall be installed before soil stripping commences.⁴
20. No development shall take place until the outfall culverts indicated on the approved Masterplan to the north of the application site boundary have been enlarged and strengthened in accordance with a scheme submitted to and approved in writing by the Mineral Planning Authority.
21. All facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least the equivalent of the capacity of the tank plus 10%. If there is a multiple tankage, the compound shall be at least equivalent of the capacity of the largest tank, or the combined capacity of the interconnected tanks, plus 10%. All filling points, vents, gauges

¹ Based on the Council's suggested condition 20, with revisions as discussed at the inquiry.

² Based on the Council's suggested condition 22, with revisions as discussed at the inquiry.

³ Based on the Council's suggested condition 23, with revisions as discussed at the inquiry.

⁴ Based on the Council's suggested condition 24(a), with revisions as discussed at the inquiry.

and site glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

22. No development shall take place until an Environmental Liaison Officer has been appointed to oversee soil stripping and storage, restoration, habitat recreation and landscaping works. The role, powers, experience and professional qualifications of the Environmental Liaison Officer shall be submitted to and agreed in writing with the Mineral Planning Authority prior to their appointment.