

## Pwyllgor Cynllunio, Trwyddedu Tacsis a Hawliau Tramwy

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Man Cyfarfod  
**Trwy Teams**

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Dyddiad y Cyfarfod  
**Dydd Llun, 27 Gorffennaf 2020**

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Amser y Cyfarfod  
**10.00 am**

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I gael rhagor o wybodaeth cysylltwch â  
**Carol Johnson**  
01597826206  
carol.johnson@powys.gov.uk



Neuadd Y Sir  
Llandrindod  
Powys  
LD1 5LG

Dyddiad Cyhoeddi

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Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

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### AGENDA

<b>1.</b>	<b>YMDDIHEURIADAU</b>
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Derbyn ymddiheuriadau am absenoldeb.

<b>2.</b>	<b>COFNODION Y CYFARFOD BLAEOROL</b>
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Awdurdodi'r Cadeirydd i lofnodi cofnodion cyfarfod blaenorol y Pwyllgor a gynhaliwyd ar 2 Gorffennaf, 2020 fel cofnod cywir.

(To Follow)

<b>Cynllunio</b>
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<b>3.</b>	<b>DATGANIADAU O DDIDDORDEB</b>
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- Derbyn unrhyw ddatganiadau o ddiddordeb gan Aelodau yn ymwneud ag eitemau sydd i'w hystyried ar yr agenda.
- Derbyn ceisiadau aelodau fod cofnod yn cael ei wneud o'u haelodaeth ar gynghorau tref neu gymuned lle cafwyd trafodaeth ar faterion sydd i'w hystyried gan y Pwyllgor hwn.
- Derbyn datganiadau gan Aelodau'r Pwyllgor y byddant yn gweithredu fel 'Cynrychiolydd Lleol' ar gyfer cais unigol sy'n cael ei ystyried gan y Pwyllgor.

- (d) Nodi manylion Aelodau'r Cyngor Sir (sydd ddim yn Aelodau o'r Pwyllgor) a fydd y gweithredu fel 'Cynrychiolydd Lleol' ar gyfer cais unigol sy'n cael ei ystyried gan y Pwyllgor.

<b>4.</b>	<b>CEISIADAU CYNLLUNIO I'W HYSTYRIED GAN Y PWYLLGOR.</b>
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Ystyried adroddiadau'r Pennaeth Eiddo, Cynllunio a Gwarchod y Cyhoedd a gwneud unrhyw benderfyniadau angenrheidiol ar hynny.

(Tudalennau 1 - 2)

**4.1. Diweddariadau**

Bydd unrhyw ddiweddariadau yn cael eu hychwanegu i'r Agenda, fel Pecyn Atodol, lle bynnag bo hynny'n bosibl, cyn y cyfarfod.

(To Follow)

**4.2. 20/0738/FUL Tir ar ac yng nghyffiniau Safle Glo Brig Nant Helen, Powys a Chanolfan Dosbarthu Onllwyn, Castell Nedd Port Talbot**

(Tudalennau 3 - 100)

<b>5.</b>	<b>PENDERFYNIADAU'R PENNAETH EIDDO, CYNLLUNIO A GWARCHOD Y CYHOEDD AR GEISIADAU DIRPRWYEDIG</b>
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Derbyn rhestr o benderfyniadau a wnaed gan y Pennaeth Cynllunio, Cynllunio a Gwarchod y Cyhoedd o dan bwerau dirprwyedig.

(Tudalennau 101 - 114)

<b>6.</b>	<b>PENDERFYNIAD AR YR APEL</b>
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Derbyn penderfyniad yr Arolygydd Cynllunio ynglyn ag apel.

(Tudalennau 115 - 118)

**Planning, Taxi Licensing and Rights of Way Committee**  
**27<sup>th</sup> July 2020**

For the purpose of the Government (Access to Information) Act 1985, the background papers relating to each individual planning application constitute all the correspondence on the file as numbered in the left-hand column.

**Applications for consideration by Committee:**

Application No:	Nature of Development:
Community:	Location of Development:
O.S. Grid Reference:	Applicant:
Date Received:	Recommendation of Head of Planning:

<p><b>20/0738/FUL</b></p> <p>Tawe-Uchaf CC</p> <p>E: 283213 N: 211223</p> <p>15/05/20</p>	<p>Full: Construction of complementary restoration earthworks to create 2 looped landform platforms (part in cutting and part on embankment) with associated drainage infrastructure and areas of landscaping and habitat creation to create a flexible and adaptable area of land that could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a proposed rail testing, research and development and storage facility). (Cross-boundary application, see Neath Port Talbot CC Application ref. P2020/0362)</p> <p>Land at and Surrounding Nant Helen Open Cast Coal Site Powys and Onllwyn Distribution Centre, Neath Port Talbot</p> <p>Mr Rob Thompson</p> <p><b>Recommendation:</b> Approval</p>
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Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

# 4.2

## Planning, Taxi Licensing and Rights of Way Committee Report

**Application No:** 20/0738/FUL

**Grid Ref:** 283213 211223

**Community Council:** Tawe-Uchaf CC

**Valid Date:**  
15/05/20

**Officer:**  
Carms CC

**Applicant:** Mr Rob Thompson, Celtic Energy Ltd, 9 Beddau Way, Castlegate Business Park, Caerphilly, CF83 2AX

**Location:** Land at and Surrounding Nant Helen Open Cast Coal Site Powys and Onllwyn Distribution Centre, Neath Port Talbot

**Proposal:** Construction of complementary restoration earthworks to create 2 looped landform platforms (part in cutting and part on embankment) with associated drainage infrastructure and areas of landscaping and habitat creation to create a flexible and adaptable area of land that could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a proposed rail testing, research and development and storage facility). (Cross-boundary application, see Neath Port Talbot CC Application ref. P2020/0362)

**Application Type:** Full

### The reason for Committee determination

The application has been called-in by two Local Members to be determined by the Planning, Taxi Licensing and Rights of Way Committee.

### Site Location and Description

The application site is located approximately 1.1km east of Penrhos; 1km east of Cae'r-bont; 100m south of Caehopkin; 750m south of Abercrave; 150m south-west of Coelbren; 350m north-west of Onllwyn and 450m north of Seven Sisters. The Brecon Beacons National Park lies to the north, the closest point being some 100m from the application site. Nant Llech SSSI lies within the National Park at approximately 115m to the north of the application site.

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

Celtic Energy Ltd currently operate the Nant Helen Remainder Opencast Coal mine which covers the western end of the application site and further land to the west. The current opencast excavation void is located outside the application site, but the

overburden storage mounds, the coal preparation plant, stocking area, offices and workshops are located within the application site.

Coal extraction operations at Nant Helen will cease in 2021 at which point Celtic Energy Ltd will be required to restore the land in accordance with the approved restoration scheme. The restoration scheme was approved on 8<sup>th</sup> June 2020 (subject to a Section 106 Agreement) and the purpose of this application, at this time, is that in combination they will create a flexible and adaptable landform that would be suitable for a variety of end uses. These are discussed further below. It should be noted that the timing of this application seeks to ensure that the construction of the landform and the restoration of the surface mine can be undertaken in tandem. There are significant cost benefits to undertaking the work at the same time.

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

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

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

The flexible and adaptable landform created by this development would allow for future leisure, tourism and industrial opportunities, which could include industrial uses such as the Welsh Government's proposal to develop a Global Centre of Rail Excellence (GCRE) for rail testing and storage. However, whilst the description of development identifies these as potential after-uses, it is important to note that these uses are not specifically proposed in this application and would be subject to separate planning applications in the future. The creation of the proposed landform in no way prejudices planning applications which may be submitted for future uses which would have to be considered on their merits. Therefore, the proposed landform has to be considered on its merits but, without prejudging future applications, those merits must consider the purpose of the landform in enabling the potential after-uses specified in the description of development.

With the exception of the Northern Embankment, works would be carried out between 0600 and 2200 hours Monday to Friday and 0700 to 1300 hours on Saturday (which is the existing site operation times for the opencast mine). Due to the closer proximity of the northern embankment to residential receptors, works on this area would be limited to between 0700 to 1800 hours Monday to Friday and between 0800 and 1300 hours on Saturday. It is expected that the Complementary Restoration Earthworks would take place at the same time as the works needed to return some of the overburden back into the void on the site (part of the restoration requirements includes the reduction in height of the overburden mound that currently exists to the east of the existing void). Together with the required site preparation works (ecological, archaeological and drainage works), this would result in a combined works programme of approximately 18 Months with approximately 300-600 on-site vehicle movements a day.

As stated above, the land at Nant Helen Surface Mine is being considered for several after uses, including as a rail test facility being promoted by Welsh Government. The proposal seeks to enable and de-risk that potential development whilst at the same time provide opportunities for recreation, leisure, agriculture and nature conservation if the GCRE proposal does not come forward. Key components of a GCRE testing facility include an external loop for high speed performance endurance testing, together with a lower speed internal loop for testing rail equipment. Both lines will include overhead line electrification. To facilitate the potential use as rail test tracks, track gradients need to be no steeper than 1:100 gradient, whilst the connection from the main railway line is to be no steeper than 1:50 and the earthworks have been designed with that in mind.

The southern area of the site is crossed by high voltage overhead lines with associated towers running roughly parallel to each other, the northern line carries Western Power Distribution's (WPD) 132kV cables, the southern line carries National Grid's (NG) 400kV cables. These issues are the main constraints associated with the site and the development into a test facility, together with the extent of the site.

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

Notwithstanding the potential use for the GCRE, the proposed earthworks would provide a comprehensive, flexible and adaptable landform across the entire site that could support a wide range of future uses including agriculture, woodland and nature conservation; and/or amenity, leisure, tourism and employment. The proposed earthworks would also provide a landform that is compatible with various leisure opportunities, such as mountain biking, walking and other outdoor pursuits

complementing the site's location adjacent to 'waterfall country' and the wider Brecon Beacons National Park.

Ultimately, Celtic Energy's intention is for the proposed earthworks to provide a flexible landform that maximises options for the beneficial reuse of land associated with Nant Helen Surface Mine, whilst ensuring not to preclude appropriate future uses that are yet to fully emerge with any degree of certainty. It is important to note that the restoration of the surface mine is time bound and the applicant wishes to carry out the earthworks at the same time as restoration in order to minimise cost and disturbance. The intention is to enable and de-risk the GCRE proposal but in the knowledge that if that proposal does not materialise the landform will facilitate other forms of development. However, at this juncture the Authority is specifically being asked to consider only the acceptability of a flexible and adaptable landform which integrates with the approved surface mine restoration scheme.

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

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

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

The site is largely within Powys but small sections along the southern boundary are within Neath Port Talbot. Therefore, an identical application has also been made to Neath Port Talbot County Borough Council.

### **Consultee Responses**

Cllr David Thomas (Tawe Uchaf Ward) and Cllr Sarah Williams (Abercraf Ward).

Please note points of concern that need to be brought to the attention of the Planning Officer and members of the Planning Committee during determination of this application.

The application is presented as either preparatory work for the GCRE Project or, if that does not materialize, future recreational usage. There is no objection to the GCRE Project as it would bring a much-needed boost to the local economy.

However there are some serious concerns about certain aspects of this application which are listed below:



1. The size of the proposed embankment directly above Caehopkin and Brooklands Terrace. In effect this would sit approximately 80 metres above the village and slope down to the settlement until it meets further sloping land made up of marshy ground and drainage ditches. In the event of any future slippage due to construction failure the whole village could be endangered. A similar concern exists with the embankment above Brooklands Terrace.
2. The proposed embankment sits on top of historic coal mining activity which could add to any potential instability in this area.
3. The proposed attenuation ponds above and behind Caehopkin and Brooklands Terrace, 3550 cubic metres and 1500 cubic metres respectively, pose a further threat to the instability of these embankments in the event of leakage and water entering the embankment structure.
4. The proposal to re-open old waterways which were made redundant during the first phase of restoration makes the possibility of flooding in the village and surrounding area a real possibility. Caehopkin already suffers from excessive run off water after the initial restoration work.
5. There does not appear to be a permanent commitment to maintenance of the proposed attenuation ponds or the waterways.
6. Measures need to be put in place to mitigate any adverse visual impact of these embankments for Cefnbyrle Road Coelbren, Caehopkin, Brooklands Terrace and Abercraf. We would suggest that plans are reviewed to attempt to move the embankments away from these populated areas.

We would also request that Cllr David Thomas be allocated time to address the Committee on the day of the meeting to determine this application.

#### Tawe-Uchaf CC

Tawe Uchaf Community Council is disappointed that Celtic Energy has presented this application at a time when the Country is in lockdown due to the deadly Coronavirus pandemic. Lockdown has prevented the circulation of consultation letters to properties close to this development. As a result, it has not allowed for proper local consultation with ratepayers. Further, and extremely important, this planning application could be determined by a Planning Committee who will not have visited the site to experience first-hand the impact of the high embankment above the village of Caehopkin. The photographs presented to the Committee have been taken from the other side of the valley. The photographs do not paint an accurate picture. Tawe Uchaf Community Council respectfully asks that planning process must be delayed to allow the Planning Committee to undertake a site visit to experience first-hand the visual impact on the village of Caehopkin.

Tawe Uchaf Community Council has discussed the details and plans in relation to the above application. Tawe Uchaf Community Council wishes to submit the following comments to the Planning Committee.

Tawe Uchaf Community Council is supportive and welcoming of initiatives and developments that will provide skilled employment opportunities in this area. However, the designs and impact on settlements in the Community would need to be satisfied.

The height of the proposed embankment above the village of Caehopkin will sit approximately 45 mtrs above the cycle track. The embankment will be constructed on restored opencast mining tips. The restored ground slopes steeply down to the cycle-track. An area of marshy ground sits adjacent to the cycle track. The marshy ground are disused holding lagoons from the opencast mining operations. The marshy area floods in heavy rain. The embankments will be constructed on this marshy area. The base of the embankment is therefore unstable. There will be a risk of slippage.

Any slippage or ground movement on this restored opencast land either under construction, heavy rainfall or heavy trains using the track will cause an immediate and possibly devastating landslip threatening to the village and its residents;

The restored opencast ground sits above old extensive underground working. The old underground workings will further prejudice ground stability

The two attenuation ponds will hold approximately 3500 and 1500 cubic metres of water respectively. This volume of water equates to approximately 3500 and 1500 tonnes of water directly above Caehopkin and Brooklands. The volumes of water held in the two ponds pose an additional threat to the residents of Caehopkin and Brooklands. The previous comments on ground stability need to be considered in this respect.

Climate change exacerbates the above comment. Rainfall totals are increasing, the severity of storms and rainfall volumes poses a further threat to ground stability.

The village of Caehopkin is already prone to flooding. The proposals to open up old watercourses will create the risk of increased flooding. Station Road, Caehopkin becomes a waterway in heavy rain.

There is a total absence of any on-going maintenance plan for the attenuation ponds and the re-opened watercourses. An effective safety maintenance plan for the ponds and watercourses must be developed and implemented

The visual impact of the GCRE project on Caehopkin and Coelbren is unacceptable. Residents have experienced 50 to 60 years of opencast mining on the site and experienced dust and ground vibration. The Council feels strongly that the visual impacts must be minimised to provide future comfort to residents.

Road safety on the A4221 will be a further risk. There will be increased vehicle movements. Some of the traffic will involve heavy slow-moving loads. The A4221

has a 60mph speed limit approaching the entrance to the site where traffic will approach and turn into the site and back into the A4221 leaving the site.

In view of the foregoing Tawe Uchaf Community Council respectfully requests a full review of the proposed plans and a redesigned scheme produced to move any track further away from the village, to mitigate the visual impacts, improve safety of the site and the relocation of the risks created by the attenuation ponds.

Finally, Tawe Uchaf Community Council, would insist, respectfully that the Planning Committee must visit this site before making a decision on this application.

The Chairman of the Council, Councillor Stephen Davies would like to address the Committee.

#### Ystradgynlais Town Council

No response received to date

#### Natural Resources Wales

Thank you for consulting Natural Resources Wales (NRW) about the above, which we received 21/05/2020.

Our advice on the proposed scheme has changed because new information has been provided since we commented on the pre planning application consultation on 16/03/2020.

We have reviewed the information submitted including the following documents:

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

We continue to have significant concerns with the proposed development as submitted. As requested, we have provided landscape impact advice which will be material to your consideration of the application.

We recommend that you should only grant planning permission if you attach the following Condition to the permission and include the following document within the conditions identifying approved plans and documents on the decision notice:

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

Condition 1 — Construction Environmental Management Plan: No development or phase of development, including site clearance, shall commence until a site wide or phase Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority.

## Landscape

Our advice relates to the potential impacts on the Brecon Beacons National Park (BBNP) which is located approximately 96 m away from the development at its closest point. The proposals would be prominent from several areas within BBNP which are of high scenic quality and sensitivity.

## Visual Effects

The Environmental Statement (ES) confirms there would be significant adverse visual effects on views from the BBNP (specifically viewpoints 1, 2, 3, 4, 5 and 11) and towards the BBNP (specifically viewpoint 18) during construction. We understand (ES Chapter 3) construction is expected to last for 73 weeks. These effects are as a result of the removal of the conifer woodland, field boundaries, views of engineered cuttings, embankments and vegetation, movement of materials, excavations and formation of embankments and cuttings. Artificial lighting will be required during daytime hours in winter during construction, but none would be required on completion.

The ES also confirms that there would be significant adverse visual effects on views from BBNP (specifically viewpoints 2, 3, 4 and 5) immediately after completion of the 73-week construction period.

The mitigation planting proposed will help integrate the development into the surrounding landscape at approximately 15 years. Even after 15 years, assuming all mitigation planting has established successfully, this will leave an engineered rather than more naturalistic landform as the slopes of the overburden mound and the form of the void would be retained, along with new earthworks. The earthworks will include embankment gradients of typically 1:3 and cuttings typically 1:2.5, with some 1:1 gradient cutting in rock. The northern embankment extends to over 30m in height and the cutting to the east to 15-20m deep. The materials for the earthworks would originate from within the existing open cast mining area.

The moderate (significant) beneficial visual effects from viewpoint 1, in our opinion, are overestimated as the complimentary earthworks combined with the revised restoration scheme for the Nant Helen surface mine retains the void and much of the overburden mound. Although we agree that the development would result in a beneficial effect from viewpoint 1, we predict that this is more likely a negligible effect and therefore nonsignificant. Therefore, even if not intended, this does not provide a balance against the significant adverse visual effects described above and, in the E.,

ES Figures 9.5-9.15 present photographs from all viewpoints and wireframes from viewpoints 3, 7, 12, and 18 to indicate the size, extent and visibility of the development. The wireframes indicate that the effects could be more adverse than previously anticipated at the pre-application stage. Landscape Institute TGN 06119

confirms that the purpose of the visualisation is to demonstrate the visual change that will be brought about if the development proceeds. The TGN confirms Type 2 wirelines (3D model) are for informed discussion, not for determining the application.

Table 1 of the guidance confirms that Types 2-4 (including photomontages) are appropriate for this scale of development in a sensitive setting (i.e. the BBNP) and to inform a Landscape Visual Impact Assessment (LVIA) & for Environmental Impact Assessment (EIA).

Given that the ES confirms significant adverse visual effects to the BBNP are long-term, and we advised the importance of development visualisation in our pre-application advice, it would be prudent to complete the photomontages as specified in TGN06/19. The assessment of significant effects is based on established planting maturity at year 15, and year 30 has been excluded. The planting would reduce but not totally alleviate the significance of adverse effects until at least year 15. Therefore, it is unlikely that the photomontages will demonstrate the reduction of the predicted significant adverse visual effects to lesser ones. However, the photomontages will provide indication to your authority on the extent of the mitigation planting proposed and how it is likely to integrate the development into the surrounding landscape.

Photomontages at year 1 and year 15 will provide visualisation of mitigating effects over time. A range of visualisations within a 3 km arc to the north, where the most adverse effects on the BBNP would occur should be included in the photomontages. Viewpoints 2, 3 and 5 are likely to be the most appropriate and should include photomontages for both year 1 and year 15. Viewpoints 2 and 3 are elevated views at different angles looking towards the northern embankment & eastern cutting. Viewpoint 5 is a closer view from lower in the valley and from the edge of the settlement looking towards the northern embankment.

#### Establishment of Mitigation Planting

We understand that landscaping the earthworks would be limited to planting and seeding of embankments and cuttings. It is assumed that all embankments and cuttings would be treated with a suitable seed mix with an aim to establish at year one. An Ecological Management and Monitoring Plan (EMMP) and a landscape strategy is to be developed for the site. These two documents are key to the establishment of the tree and woodland planting that ensure the successfulness of the mitigation planting becoming adequately established on colliery spoil at the year 15. It would be beneficial that these documents are combined into one Landscape Ecological Management Plan (LEMP) to ensure consistency in delivering the mitigation objectives.

We note that the ecology chapter of the ES suggests a five-year period of monitoring and management, but the effectiveness of the planting to achieve a non-significant effect on the National Park needs at least 15 years to establish. This is largely due to the challenges of establishing trees and shrubs on colliery spoil. Therefore, should your authority consider the inclusion of a LEMP in a condition, it should provide for a 15-year period and have a mechanism for extension should the planting need longer term management to achieve the desired effect.

In conclusion, it is our opinion that these works would result in significant adverse impacts on the BBNP during construction and for at least 15 years (i.e. the long term). Aspects of the proposed engineered features will remain permanently but are likely to reduce to a residual lesser adverse impact after 15 years. This 15-year period could be extended as it is dependent on the establishment of the tree and woodland.

#### Protected Sites Special Areas of Conservation (SAC)

As identified within the ES, there are three SAC within 15 km of the proposal, namely:

- Coedydd Nedd a Melite SAC, 4.2 km to the south-east
- Cwm Cadlan SAC and, 9.5 km east
- Blaen Cynon SAC, 10.4 km east

We have reviewed the information provided within the ES and Appendix 7R part A and B (Habitat Regulation Assessment Screening Report). We consider that the proposal is not likely to have a significant effect on the SAC listed above. Our advice may change should modifications be made to the proposed development prior to the determination of the application. If there are any changes to the development which may affect the consideration of potential environmental impacts, please consult us again before you determine the application.

#### Sites of Special Scientific Interest (SSSI)

We have considered the information within the ES submitted in support of the above application. The ES identifies the presence of 12 SSSIs within 15 km of the proposal and concludes that many of the sites will not be directly or indirectly affected by the proposal.

The only site that has been identified to be hydrologically connected to the development is the Nant Llech SSSI, which is located approximately 100m to the north east. The SSSI has been designated for its biological (deciduous woodland and bryophytes) and geological (Westphalian sedimentary rocks and fossils) features. Therefore, biological features of this site could be affected by pollution events and surface run-off with a high sediment load.

The ES clearly concludes that the effects would be temporary and reversible and the likelihood of any pollution incidents to occur would be minimised by adopting appropriate Pollution Control Measures as identified in the Construction Environmental Management Plan (CEMP). We have reviewed the outline CEMP (Appendix 3B) and based on the information submitted, and provided the outlined measures are implemented, we consider that the proposed development is not likely to damage the features for which Nant Llech SSSI is of interest. Therefore, we advise your authority that the submission of a CEMP and associated supportive documents should be secured via appropriately worded planning condition to ensure necessary management measures are agreed prior to commencement of

development, or phase of development and implemented for the protection of the environment during construction.

Condition 2 — Construction Environmental Management Plan: No development or phase of development, including site clearance, shall commence until a site wide or phase Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority.

The CEMP should include:

- Construction methods: details of materials, how waste generated will be managed;
- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containments areas, appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain.
- Biodiversity Management: details of tree and hedgerow protection; Invasive Non- Native Species (INNS) management plan; species and habitats protection, avoidance and mitigation measures.
- Resource Management: details of fuel and chemical storage and containment; details of waste generation and its management; details of water consumption, wastewater and energy use
- Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details

The CEMP shall be implemented as approved during the site preparation and construction phases of the development.

### Protected Species

We have reviewed the information within the ES and associated species survey reports specifically appendices 7P part 1 and part 2 and 7J (Bats); 7I (riparian mammals); 7L (dormouse); 7E part 1 and part 2 (amphibians); 7O (evaluation of impacts on important ecological receptors).

Based on the survey results and the mitigation measures proposed, we are satisfied that the proposal is unlikely to affect European Protected Species (EPS), however the potential for species such as bats and otters to be present could not be fully discounted. We also acknowledge that due to the nature and scale of the proposal, works will be carried out at different phases and agree with the recommendations made in section 7.20 of the ES that pre-construction surveys for bats and otter will be required to establish whether these species are going to be affected. Preconstruction surveys will be detailed in the EPP as stated in section 4.3.16 of the outline CEMP.

Therefore, we advise you to secure the implementation of such recommendation by

including the ES and outline CEMP document within the condition identifying approved plans and documents on the decision notice.

### Biosecurity

We consider biosecurity to be a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern Invasive Non-Native Species (INNS) due to Extended Phase 1 Habitat Survey (ES Appendix 7A) confirming the presence of Japanese knotweed (*Fallopia japonica*), montbretia (*Crocasmia x crocosmiiflora*), wall cotoneaster (*Cotoneaster horizontalls*) and rhododendron (*Rhododendron ponticum*). We acknowledge that the locations of the INNS identified in the survey may be outside of the planning application boundary. However, it is likely time will lapse before the start of construction and the potential for some of these species to become established in the development site may occur. Therefore, it is necessary to consider the potential effects and prepare accordingly. We note section 7.20 (Construction Mitigation) of the ES states an INNS management Plan will be produced. The PAC report (Grasshoppers Communication Ltd, April 2020) states that such plan will be included in the outline CEIVIP to be submitted in support of the planning application. We have reviewed the outline CEMP (Arup, April 2020) and we note that no INNS Management Plan has been added the document. Section 4.3.18 refers to the INNS Management Plan being drawn up prior to site clearance. Therefore, the INNS Management Plan should be integrated within the CEMP and its submission and implementation secured via Condition.

We consider that this assessment must include appropriate measures to control any INNS on site; and measures or actions that aim to prevent INNS being introduced to /allowed to disperse from the site for the duration of construction and operational phases of the scheme.

We refer you to the GB non-native species secretariat 'Check, Clean, Dry' guidelines which also apply to the use of machinery on construction sites.  
<http://www.nonnativespecies.org/checkcleandry/index.cfm>

### Land contamination & water quality

We have reviewed the information submitted within the ES, the Drainage Strategy (Arup April 2020) and the outline CEMP. We understand that surface water drainage from the site will be discharged via a variety of methods into the local water course network and infiltration to natural ground will occur on the rest of the site. We have no comments to make on site drainage.

From the Desk Study within the ES we note that further site investigation for land contamination will be undertaken. We suggest that targeted sampling in areas of known contamination risk, for example, area where tank have been located. However, we consider that the controlled waters at this site are not of the highest environmental sensitivity.

Therefore, we will not be providing detailed site-specific advice or comments with regards to land contamination issues.



It is recommended that the requirements of Planning Policy Wales and the Environment Agency Guiding Principles for Land Contamination (GPLC 1, 2, and 3), March 2010, should be followed. GPLC can be downloaded from the Environment Agency website.

These comments are based on our assumption that gross contamination is not present at this location. If, during development, gross contamination is found to be present at the site your authority may wish to re-consult us.

We are satisfied the outline CEMP details all the latest guidance and we understand this will be updated as the works proceed. We are satisfied that details have been provided to address any likely environmental issues. We would advise your authority to secure the implementation of the CEMP via appropriately worded condition (refer to Condition 1 above).

#### Other Matters

Our comments above only relate specifically to matters included on our consultation topic list, Development Planning Advisory Service: Consultation Topics (September 2018), which is published on our website. We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other environmental interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our website for further details.

#### Welsh Government Department for Economy and Infrastructure

I refer to your consultation of 22nd May 2020 regarding the above application. In order to ensure that there are no significant impacts to the trunk road network during the construction phase, the Welsh Government directs that the following condition is applied to any consent your Authority may grant.

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

If you have any further queries, please forward to the following Welsh Government Mailbox [NorthandMidWalesDevelopmentControlMailbox@gov.wales](mailto:NorthandMidWalesDevelopmentControlMailbox@gov.wales)

Welsh Government Department for Economy and Infrastructure (Updated following confirmation that the 300-600 vehicle movements were internal site movements)

Thank you for confirming that. We have no significant concerns on the trunk road network in that case. Therefore our directed condition is withdrawn.

#### Neath Port Talbot County Borough Council

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

#### Brecon Beacons National Park Authority

Thank you for your consultation received 22 May 2020 regarding the above.

We understand Celtic Energy Limited has submitted a full (cross-boundary) planning application to Powys County Council and Neath Port Talbot Council for proposed earthworks at the site of the Nant Helen Opencast Coal site. It is understood from the submitted Planning Statement that this planning application relates to the entire extent of land subject to coaling operations over the history of the mine and that the proposed earthworks are intended to complement the revised restoration strategy associated with the western extent of the site to be delivered under a separate Section 73 planning application, which received resolution to grant permission at Committee in March 2020, and will amend the extant planning permission granted under planning application P/2011/0217 and Section 73 application 18/ I 070/REM.

It is understood that the red outline of the site subject to the above planning application measures 416 hectares and is circa 100m from the Brecon Beacons National Park Authority (NPA) boundary at its closest point. It is noted that the vast majority of the site is located in Powys, with a smaller area in the southern area of the site located in Neath Port Talbot.

We set out below background on the NPA's policy and legal context. The letter ends with our comments on the planning application submission made available on your website.

#### Background

#### Policy and legal context

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

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

In accordance with section 62(2) of the Environment, any relevant Authority shall have regard to National Park purposes when performing any functions in relation to, or so as to affect, land in a National Park. Relevant Authorities include public bodies, government departments, local authorities and statutory undertakers.

The Special Qualities of the National Park may be significantly impacted by development proposals on the fringes of the National Park. The Brecon Beacons National Park Management Plan 2015-2020 defines the Special Qualities of the Brecon Beacons National Park as follows:

- A National Park offering peace and tranquillity with opportunities for quiet enjoyment, inspiration, relaxation and spiritual renewal.
- A feeling of vitality and healthfulness that comes from enjoying the Park's fresh air, clean water, rural setting, open land and locally produced foods.
- A sense of place and cultural identity - "Welshness" - characterised by the use of the indigenous Welsh language, religious and spiritual connections, unique customs and events, traditional foods and crafts, relatively unspoilt historic towns, villages and family farms. The continued practices of traditional skills developed by local inhabitants to live and earn a living here, such as common land practices and grazing.
- A sense of discovery where people are able to explore the Park's hidden secrets and stories such as genealogical histories, prehistoric ritual sites, medieval rural settlements, early industrial sites, local myths, legends and geological treasures.
- The Park's sweeping grandeur and outstanding natural beauty observed across a variety of harmoniously connected landscapes, including marvellous gorges and waterfalls, classic karst geology with caves and sink holes, contrasting glacial landforms such as cliffs and broad valleys carved from old red sandstone and prominent hilltops with extensive views in all directions.
- A working, living "patchwork" of contrasting patterns, colours, and textures comprising of well-maintained farmed landscapes, open uplands, lakes and meandering rivers punctuated by small-scale woodlands, country lanes, hedgerows, stone walls and scattered settlements.
- Extensive and widespread access to the Park's diversity of wildlife and richness of seminatural habitats, such as native woodlands, heathland and grassland, natural lakes and riparian habitats, ancient hedgerows, limestone pavement and blanket bogs including those of international and national importance.
- In the context of the UK, geographically rugged, remote and challenging landscapes.
- Enjoyable and accessible countryside with extensive, widespread and varied opportunities to pursue walking, cycling, fishing, water-based activities and other forms of sustainable recreation or relaxation.
- An intimate sense of community where small, pastoral towns and villages are comparatively safe, friendly, welcoming and retain a spirit of cooperation.

Planning Policy Wales (PPW) (Edition 10) acknowledges the statutory purposes of National Parks and references the "Sandford Principle", whereby if there is a conflict between the statutory purposes, greater weight shall be given to the first purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage. PPW states that "planning authorities have a statutory duty to have regard to National Parks and AONB purposes.

This duty applies in relation to all activities affecting National Parks and AONBs, whether those activities lie within, or in the setting of the designated areas. The designated landscape should be drivers of the sustainable use and management of natural resources in their areas, and planning authorities should have regard to their identified special qualities in the exercise of their functions and any relevant management plans." (see para 6.3.5) (underlining is my emphasis).

Consideration

The Planning Application

It is understood that the proposed development relates to a combination of proposed cuttings (mostly to the west, east and south) and embankments (mostly to the north) creating a loop form. The materials for the earthworks would all originate on site and represent a volume of approximately 3,255,000m<sup>3</sup>.

Together with the required site preparation works a works programme of approximately 18 Months, with approximately 300-600 vehicle movements a day, is proposed. With the exception of the Northern Embankment, works would be carried out over 16 hours a day, 7 days a week (which we understand is the existing site operation times for the opencast mine). Due to the closer proximity of the northern embankment to residential receptors, works on this area would be based on a shorter 60-hour working week (6 days a week).

The submitted Environmental Statement (ES) includes a Landscape Visual Impact Assessment (LVIA) which utilises an 8km Zone of Theoretical Visibility (ZTV) and has assessed 18 viewpoints, some of which were requested by the NPA in previous comments. The ES concludes that there will be significant adverse visual impacts during construction on 14 viewpoints (out of 18), 5 of which are noted to be recreational receptors within the National Park. On completion of the works (year 1), significant adverse visual effects are noted on 8 viewpoints (out of 18), 3 of which are noted to be recreational receptors within the National Park. Photomontages do not form part of the LVIA to illustrate these findings — wire frame pictures of some viewpoints have been submitted instead.

The ES appears to not assess in detail the landscape and visual effects of the development for a longer period than year 1 completion as ES para 9.5.6 states: "...the future use of the earthworks is at this stage undefined. Therefore, assessment of the significance of effects based on the future establishment/maturity of planting (typically presented as assessment of effects at year 15 and year 30) has been excluded. However, mitigation planting proposals that would reduce the significance of effects have been described at the end of this chapter". Although it appears from para 9.5.6 a LVIA beyond 1-year completion has not been undertaken, a section of native broadleaf woodland is proposed as landscape mitigation around the proposed new embankment to the north of the site (within Powys). This is intended to replace established coniferous tree area which includes a small part of a Plantation on Ancient Woodland (PAW) site and some hedgerows and field pattern, which will be lost due to the creation of the new embankment. It is noted that NRW has previously raised concern with the adequacy of this mitigation, stating this was likely

to take a long time to establish and that the effects of the planting would only be noticeable after year 15. NRW stated that further consideration be given to the design of the scheme to establish whether a revised design can avoid or mitigate adverse impacts on the National Park. The ES responds to these previous comments stating: "consideration of the slackening of embankment slopes has been given. To the north of the scheme this would result in the encroachment of engineered landform closer to residential properties and the removal of further woodland/vegetation, neither of which would be deemed advantageous.

Planting of broadleaved woodland along the northern embankment would, over time help to integrate the earthworks with the surrounding wooded valley character of the landscape. In order to reduce the time frame for the integration of the Project, it is proposed that a proportion of the planting should be larger stock and that a perceptible reduction in adverse effects would be experienced within the first 5 years. As the future use of the earthworks is yet to be established, full details of planting proposals and a landscape strategy would be developed prior to implementation" (see ES Table 9.1).

### Landscape and visual impact

Having reviewed the submission, the NPA comments focus mostly on the landscape and visual impact of the proposal as these are the aspects of the proposal which are considered to impact on the National Park's purposes and 'sweeping grandeur and outstanding natural beauty' and 'working, living "patchwork" of contrasting patterns, colours, and textures' special qualities. We make the following comments:

1. It is noted that the Zone of Theoretical Visibility (ZTV) has been extended to 8km following previously issued comments on this aspect. This change from a 2km ZTV is supported.

2. Previous comments from the NPA also outlined the need for additional viewpoints to be included in the LVIA some of which have now been included. It is unclear why some of the suggested viewpoints were not deemed appropriate.

3. Significant adverse visual effects on the National Park are outlined in the ES from the north (areas within Powys County) and therefore the NPA has significant concerns with the impact the proposal will have on the special qualities of the National Park from this direction — namely the National Park's 'sweeping grandeur and outstanding natural beauty' and 'working, living "patchwork" of contrasting patterns, colours, and textures' special qualities. It would seem these impacts around the northern areas may be significant for a considerable length of time, in advance of any landscape mitigation establishing. Whilst it is up to the decision-maker regarding how the requirement on planning authorities to give regard to the purposes of the National Park and the National Park's identified special qualities are taken into account in determining this cross-boundary planning application, it would seem that given the impacts a more effective landscape mitigation strategy is required (in the apparent absence of the applicant being able to revisit the scheme's design).

4. Wireframe details have been produced as part of the LVIA showing the proposed outline of the proposal but no photomontages — photomontage information is recommended in order to understand the expected change and how effective the landscape mitigation proposed will be to the north. This information is also recommended to provide a basis for the statement on residual effects set out in para 9.1.1 which states "once mitigation planting has established in 10-15 years it is anticipated there will be no residual significant landscape and visual effects".

5. We share NRW's previously raised concern over the length of time which it will take for the proposed landscape mitigation to the north (in Powys) to fully establish and the resultant impact on the length of significant adverse visual effect on the National Park. We have concerns as to whether planting larger specimens will address this issue given the specific characteristics of the site which may mean such planting may be more susceptible to failure.

6. We do not consider it is appropriate for full details relating to landscape mitigation to be left until the future use of the earthworks has been established (as suggested in table 9.1). Planning authorities have a statutory duty to have regard to the National Park purposes (as set out in PPW). Information on landscape mitigation including its associated maintenance and management are considered important in understanding the impact on the National Park Special Qualities. It is recommended the decision-maker requires this information in order to inform the determination of this planning application.

## Conclusion

Based on the comments above, the Brecon Beacons National Park Authority currently has significant concern that the proposal will have adverse impacts on one of the National Park's statutory purposes —

namely "to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park". The NPA also have significant concern that the proposal will adversely impact on two of the Special Qualities of the Park — its "sweeping grandeur and outstanding natural beauty" and the "working, living "patchwork" of contrasting patterns, colours, and textures". It is recommended that the decision-maker requests further information from the applicant to understand the visual impacts upon the National Park (from the north which is most relevant for Powys County Council's decision) and that a detailed and an effective landscape mitigation strategy is provided as part of this planning application.

Please note that this response has been prepared by Officers, and will not receive formal ratification from Members until 28th July 2020 after which point in time I may provide supplementary response as necessary.

We trust the above comments are of assistance however if you wish to discuss any aspect further please do not hesitate to contact me.

Clwyd Powys Archaeological Trust

Thank you for the consultation on this application.

We have been involved with the early screening and scoping opinions and we have been in contact with the consultants during the iterative process of assembling the ES and completing prior archaeological assessments.

We note the content of the ES and we are in agreement with the mitigation set out in 8.10 and specifically 8.10.1 to 8.10.4. A suitably qualified archaeological contractor will need to be engaged to complete the mitigation works outlined in accordance with an approved WSI. We will need to approve the WSI before archaeological fieldwork commences. A suggested condition for the archaeological mitigation is included below:

Suggested planning condition to facilitate a scheme of archaeological investigation as a condition of consent.

No development shall take place within the application area until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved in writing by the Local Planning Authority. The archaeological programme of work will be undertaken and completed in accordance with the relevant Standards and Guidance laid down by the Chartered Institute for Archaeologists. A copy of the resulting report should be submitted to the Local Planning Authority and the Development Control Archaeologist, (Clwyd-Powys Archaeological Trust, The Offices, Coed y Dinas, Welshpool, SY21 8RP Email: mark.walters@cpat.org.uk Tel: 01938 553670). After approval by the Local Planning Authority, a copy of the report and resulting archive should also be sent to the Historic Environment Record Officer, Clwyd Powys Archaeological Trust for inclusion in the regional Historic Environment Record and the National Monuments Record, RCAHMW. Reason: To secure preservation by record of all archaeological remains which will be impacted by the development

We also note the issues regarding the scheduled monument known as the Claypons Extension Tramroad on the southern boundary of the development area. We agree that this is a major adverse and therefore significant impact on the scheduled monument and understand that the applicant is in discussion with CADW and will submit a scheduled monument consent application. This impact will need to be fully addressed, and suitable mitigation agreed if possible, before permission is given.

#### The Coal Authority

Thank you for your consultation letter of 22 May 2020 seeking the views of The Coal Authority on the above planning application.

The Coal Authority is a non-departmental public body sponsored by the Department of Business, Energy & Industrial Strategy. As a statutory consultee, The Coal Authority has a duty to respond to planning applications and development plans in order to protect the public and the environment in mining areas.

The Coal Authority Response: Material Consideration

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

We note this proposal is to restore the land at this site in order to provide a comprehensive, flexible and adaptable landform across the entire site that could support a wide range of future uses including agriculture, woodland and nature conservation; and/or amenity, leisure, tourism and employment. Section 2 of The Environmental Statement (ES), May 2020 identifies that the possible industrial uses include the Welsh Government's proposed rail testing, research and development, and storage facility. Therefore, the platform / land profile required for this would have already been created as part of the restoration works, avoiding the need for further extensive earthmoving.

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

The applicant's technical consultants (ARUP) have carried out an in-depth review of extensive range of coal mining / geological information and highlight the risks associated with former mining activities as 'risk zones Figure 8) in relation to the design of the testing track (Appendix GA of the ES - Section 9). We welcome the comments made (Section 15.3) that both intrusive and non-intrusive works are to be undertaken in order to confirm the exact ground conditions (to include location / condition of mine entries; alignments of opencast highwall(s)) and to inform the extent of remedial actions required (including layout to avoid mine entries / opencast highwalls) to mitigate the risks to the future development at this site.

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

#### The Coal Authority Recommendation to the LPA

The Coal Authority considers that an in-depth assessment of coal mining legacy has been undertaken by the applicant's technical consultants: ARUP. Therefore as per their recommendations, the exact ground conditions should be confirmed in order to inform the extent of remedial / mitigatory measures required to ensure that the development platforms are suitable for the development proposed and will be safe and stable for each respective land use (Planning Policy Wales paras 6.9.23 — 27). The Coal Authority has no objections to this proposal subject to the LPA imposing a suitably worded condition to secure the site investigations as recommended by ARUP — Section 15.3 of Appendix 6A: Environmental Statement, May 2020).



Please note that whilst we recommend that the above planning conditions are applied if planning permission is granted, due to the Covid-19 pandemic, our own staff resources are significantly reduced. Until further notice we are therefore not able to offer any comments in relation to further related applications that may be made for the discharge of conditions.

We would be very grateful if you could refrain from sending the Coal Authority any consultations relating to the discharge of conditions until further notice. We trust that in this difficult time the local planning authority will appropriately consider the information submitted by applicants to assess whether any mining legacy related conditions have been duly complied with.

Please do not hesitate to contact me if you would like to discuss this matter further.

### General Information for the Applicant

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. In the event that you are proposing to undertake such work in the Forest of Dean local authority area our permission may not be required; it is recommended that you check with us prior to commencing any works. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: <https://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property>

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-over-or-within-the-influencing-distance-of-mine-entries>

Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Prior extraction of surface coal requires an Incidental Coal Agreement from The Coal Authority. Further information can be found at: <https://www.gov.uk/get-a-licence-for-coal-mining>

Disclaimer

The above consultation response is provided by The Coal Authority as a Statutory Consultee and is based upon the latest available data on the date of the response, and electronic consultation records held by The Coal Authority since 1 April 2013, The comments made are also based upon only the information provided to The Coal Authority by the Local Planning Authority and/or has been published on the Council's website for consultation purposes in relation to this specific planning application. The views and conclusions contained in this response may be subject to review and amendment by The Coal Authority if additional or new data/information (such as a revised Coal Mining Risk Assessment) is provided by the Local Planning Authority or the Applicant for consultation purposes.

In formulating this response The Coal Authority has taken full account of the professional conclusions reached by the competent person who has prepared the Coal Mining Risk Assessment or other similar report. In the event that any future claim for liability arises in relation to this development The Coal Authority will take full account of the views, conclusions and mitigation previously expressed by the professional advisers for this development in relation to ground conditions and the acceptability of development.

#### Dwr Cymru Welsh Water

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

The proposed development site lies adjacent to a strategic asset in the form of a 500mm trunk watermain located to the west and north, along with various other public sewer and watermain assets. In this instance whilst it does not appear any part of the site lies within the protection zone of the 500mm watermain, measured 6 metres either side of the centreline, the site is located within the boundary of the permission granted for the wider restoration scheme of Nant Helen Surface Mine (Ref: 19/1899/REM) and in this respect we remind of the requirements of conditions 23 – 30, relating to water management, alongside conditions relating to blasting and vibration (15 – 19).

For the purposes of this latest application we offer no objection in principle subject to inclusion of the following Condition and Advisory Notes, if minded to grant planning consent, to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets:

#### Condition

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

#### Advisory Notes

As of 7th January 2019, this proposed development may be subject to Schedule 3 of the Flood and Water Management Act 2010 and therefore approval of Sustainable

Drainage Systems (SuDS) features will be required in accordance with the 'Statutory standards for sustainable drainage systems – designing, constructing, operating and maintaining surface water drainage systems'. It would therefore be recommended that the developer engage in consultation with the relevant local authorities, as the determining SuDS Approval Bodies (SABs), in relation to their proposals for SuDS features. Please note, Dwr Cymru Welsh Water is a statutory consultee to the SAB application process and will provide comments to any SuDS proposals by response to SAB consultation.

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com)

Please quote our reference number in all communications and correspondence.

### Wales & West Utilities

Thank you for contacting us regarding Wales & West Utilities equipment at the above site.

According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However, Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

Safe digging practices, in accordance with HS(G)47, Avoiding Danger from underground services must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus. Safe working procedures should be defined and practiced.

### CADW

Thank you for your letter of 22 May 2020 inviting our comments on the above planning application.

Advice

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

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

I have attached a list of scheduled monuments within 3km of the site at Annex A.

#### Our role

Our statutory role in the planning process is to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled monuments, registered historic parks and gardens, registered historic landscapes where an Environmental Impact Assessment is required and development likely to have an impact on the outstanding universal value of a World Heritage Site. We do not provide an assessment of the likely impact of the development on listed buildings or conservation areas, as these are matters for the local authority.

It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission.

#### National Policy

Applications for planning permission are considered in light of the Welsh Government's land use planning policy and guidance contained in Planning Policy Wales (PPW), Technical Advice Notes and related guidance.

PPW ([planning-policy-wales-edition-10.pdf](#)) explains that it is important that the planning system looks to protect, conserve and enhance the significance of historic assets. This will include consideration of the setting of an historic asset which might extend beyond its curtilage. Any change that impacts on an historic asset or its setting should be managed in a sensitive and sustainable way.

The conservation of archaeological remains and their settings is a material consideration in determining a planning application, whether those remains are a scheduled monument or not. Where nationally important archaeological remains are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in exceptional circumstances that planning permission will be granted if development would result in a direct adverse impact on a scheduled monument (or an archaeological site shown to be of national importance).

[Technical Advice Note 24: The Historic Environment](#) elaborates by explaining that when considering development proposals that affect scheduled monuments or other nationally important archaeological remains, there should be a presumption in favour

of their physical preservation in situ, i.e. a presumption against proposals which would involve significant alteration or cause damage, or would have a significant adverse impact causing harm within the setting of the remains.

#### PCC Contaminated Land Officer

I have looked at the submitted information and in respect of issues around contaminated land, the reports are the same as those previously commented on. It is worth repeating that the current application for multiple and carried uses is not reflected in the desk study submitted. As previously stated, I am satisfied that the site can be conditioned but end-use specific assessments need to be produced.

The subject site is identified as being a coal mine and washery and other associated infrastructure which is potential contaminated land. The submitted reports are not development specific but are sufficient to recommend the following conditions.

#### Condition A

##### Condition 1. Preliminary Investigation

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

The report of the findings shall include:

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

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

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

##### Condition 2. Site Characterisation

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

The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.

### Condition 3. Submission of Remediation Scheme

No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority.

The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 2 has been received from the local planning authority.

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

### Condition 4. Implementation of Approved Remediation Scheme

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

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

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local

planning authority. *The verification report contents must be agreed with the local planning authority before commencement of the remediation scheme.*

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

#### Condition 5. Long Term Monitoring and Maintenance

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

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

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

Reason (common to all): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors [in accordance with policy \_\_\_\_ of the adopted Local Plan (date)].

Note to Applicant

#### Potential Contamination

The Council's guidance leaflet on the development of sites with potential land contamination is attached. Further advice on compliance with this condition may be obtained by contacting the Environmental Health Service on 01597 827645

#### PCC Built Heritage Officer

Recommendation: No Objections

Background to Recommendation

Designations

Scheduled Monuments

# heritage assets that were identified as requiring further assessment in relation to impacts arising from changes to their setting. (section A4.1.32 of Appendix 8A heritage Desk based Assessment)

# Cadw ID BR323 Bryn Llechwen ring cairn designated on 31/05/2006  
# Cadw ID GM399 Tramroad at Ystradgynlais (not within Powys)  
Cadw ID BR072 Saith Maen  
# Cadw ID BR074 Section of Road NE of Coelbren Fort  
# Cadw ID BR173 Pillow Mounds at Pant Mawr  
#Cadw ID BR237 Cribarth Limestone Quarries and Tramroads  
Cadw ID BR246 Craig-y-Rhiwarth Hillfort  
Cadw ID BR256 Hut Circle West of Saith Maen  
Cadw ID BR333 Dorwen Standing Stone  
Cadw ID BR388 Lorfa Stone Circle  
Cadw ID BR198 Fan house to former Ynyscedwen Mine designated 31/01/1992\*  
Cadw ID BR201 Lefel Fawr Coal Audit designated 18/09/1994  
#Cadw ID BR222 Abercrave Ironworks designated 21/20/1995  
#Cadw ID GM146 Coelbren Fort (not within Powys)  
#Cadw ID GM343 Roman Marching Camp (not within Powys)  
Cadw ID GM420 Remains of Blast Furnaces at Banwen (not in Powys)  
#Cadw ID GM272 Hirfynydd Roman Earthwork (not in Powys)  
#Cadw ID GM593 Coed Ddu Platforms and Enclosure (not in Powys)  
Cadw ID GM592 Coed Ddu ring Cairn (not in Powys)  
Cadw ID GM275 Carn Cornel  
Cadw ID GM396 Canal Aqueduct Ystalyfera (not in Powys)\*\*

\*Fan house to former Ynyscedwen Mine is also a Listed Building Cadw ID 25952 included on the statutory list on 31/01/1992

\*\* Canal Aqueduct of River Twrch Ystalyfera is also a Scheduled Ancient Monument  
Registered Historic Park and Garden

Craig y Nos Castle and Country Park grade II\*

Listed Buildings

# heritage assets that were identified as requiring further assessment in relation to impacts arising from changes to their setting. (section A4.1.32 of Appendix 8A heritage Desk based Assessment)



Cadw ID 17922 Yard House included on the statutory list of 26/09/1994

Cadw ID 7468 Pont-y-Yard included on the statutory list on 06/11/1963

# Cadw ID Hen Noyadd included on the statutory list on 17/01/1963

Cadw ID 6610 Circular cow-house at Gwaunclawdd grade II\* incl on the list on 17/01/1963

#Cadw ID 6606 10 Lamb and Flag Cottages included on the statutory list on 17/01/1963

#Cadw ID 6607 12 Lamb and Flag Cottages included on the statutory list on 17/01/1963

#Cadw ID 6609 Outbuildings opposite Lamb & Flag Cottages incl on the list on 17/01/1963

#Cadw ID 6608 The Pound included on the statutory list on 17/01/1963

#Cadw ID 7544 Cae'r Lan Castle included on the statutory list on 21/01/1994

Cadw ID 25952 Fan house to former Ynyscedwen Mine included on the statutory list 04/12/2001\*

#Cadw ID 23032 Sardis Chapel included on the statutory list on 21/03/2000

Cadw ID 25946 74 Heol Giedd included on the statutory list 04/12/2001

Cadw ID 25947 76 Heol Giedd included on the statutory list 04/12/2001

Cadw ID 25948 78 Heol Giedd included on the statutory list 04/12/2001

Cadw ID 25949 80 Heol Giedd included on the statutory list 04/12/2001

Cadw ID 25950 82 Heol Giedd included on the statutory list 04/12/2001

Cadw ID 23080 Godre'r Rhos Independent Chapel grade II\*(within BBNP)

Cadw ID 7491 Craig y Nos – grade II\* (within BBNP)

Cadw ID 7492 Theatre at Graig y Nos **grade I** (within BBNP)

Cadw ID 82050 the War Memorial Seven Sisters – not within Powys

Cadw ID 82048 Circular Pigsty at Blandulais Farm – not within Powys

# Cadw ID 25953 Canal Aqueduct of River Twrch Ystalyfera – not within Powys \*\*

\* Fan house to former Ynyscedwen Mine is also a Scheduled Ancient Monument designated on 31/01/1992

\*\* Canal Aqueduct of River Twrch Ystalyfera is also a Scheduled Ancient Monument

#### Policy Background

The advice has been given with reference to relevant policies, guidance and legislation

The Planning (Listed Buildings and Conservation Areas) Act 1990

Planning Policy Wales 10<sup>th</sup> edition 2018

Conservation Principles published by Cadw

TAN24

Managing Change to Listed Buildings in Wales – Annexe to TAN24

Setting of Historic Assets in Wales – Annexe to TAN24

Heritage Impact Assessments – Annexe to TAN24

Historic Environment Records

Local Development Plan

Strategic Policy SP7

DM13 Design and Resources Local Development Plan Themes and Objectives;

Theme 4 – Guardianship of natural, built and historic assets

LDP Objective 13 – Landscape and the Historic Environment

Comments

I note the proximity to Scheduled Monuments and as Cadw are the consultee in respect of these designations I shall offer no comment in respect of these assets but shall consider the impact on the setting of listed buildings only.

I am mindful of the advice in Sections 66 of the Planning (Listed Buildings and Conservation areas) Act 1990, which require authorities considering applications for planning permission or listed building consent for works which affect a listed building to have special regard to certain matters, including the desirability of preserving the setting of the building. The setting is often an essential part of a building's character especially if a park, garden or grounds have been laid out to complement its design or function. Also, the economic viability as well as the character of historic buildings may suffer and they can be robbed of much of their interest and of the contribution they make to townscape or the countryside if they become isolated from their surroundings, e.g. by new traffic routes, car parks, or other development.”

However, I would also refer to more recent guidance in paragraph 6.1.10 of Planning Policy Wales 10<sup>th</sup> edition 2018 which states, “ *For any development proposal affecting a listed building or its setting, the primary material consideration is the statutory requirement to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.*”

Section 6.1.9 of PPW 10 advises that “ *Any decisions made through the planning system must fully consider the impact of the historic environment and on the significance and heritage values of individual historic assets and their contribution to the character of place*”

Section 6.1.7 of Planning Policy Wales 10th edition requires that “ *it is important that the planning system looks to protect, conserve and enhance the significance of historic assets. This will include consideration of the setting of an historic asset which might extend beyond its curtilage. Any change that impacts on an historic asset should be managed in a sensitive and sustainable way*”

Preserving means “doing no harm” and the harm to the setting of the listed buildings identified should be afforded considerable weight.

I note the methodology adopted in Chapter 8 of the Environmental Statement and the accompanying Appendix 8 Cultural Heritage, which identified 113 heritage assets ( not all designated within the site and study area. These have been assessed as one Scheduled Monument and 35 non designated heritage assets within the site. Cadw are the consultee in respect of the Scheduled Monument and Clwyd Powys Archaeological Trust and Glamorgan Gwent Archaeological Trust in respect of the non designated archaeological assets on the site.

39 designated heritage assets have been identified within the study area, 6 of which are within the ZTV and have the potential to be affected by changes to their setting. (section 8.7.5 of the Environmental Statement). However appendix 8 identified 18 heritage assets that were identified as requiring further assessment in relation to impacts arising from changes to their setting. (section A4.1.32 of Appendix 8A heritage Desk based Assessment). 10 of those were scheduled monuments and as such an assessment of the setting has been made by Cadw, the remaining 8 are listed buildings of which 7 are within Powys County Council area namely;

Cadw ID Hen Noyadd included on the statutory list on 17/01/1963

Cadw ID 6606 10 Lamb and Flag Cottages included on the statutory list on 17/01/1963

Cadw ID 6607 12 Lamb and Flag Cottages included on the statutory list on 17/01/1963

Cadw ID 6609 Outbuildings opposite Lamb & Flag Cottages incl on the list on 17/01/1963

Cadw ID 6608 The Pound included on the statutory list on 17/01/1963

Cadw ID 7544 Cae'r Lan Castle included on the statutory list on 21/01/1994

Cadw ID 23032 Sardis Chapel included on the statutory list on 21/03/2000

An assessment of the setting of these assets is contained between pages 23 – 29 of the of Appendix 8A Heritage Desk based Assessment.

I would agree with the conclusions that the setting of the identified 7 listed buildings within Powys County Council area would not be harmed by the proposal. In agreeing with the conclusions I have considered the proposal against TAN24 which addresses setting with some of the factors to consider and weigh in the assessment including

- the prominence of the historic asset
- the expected lifespan of the proposed development
- the extent of tree cover and its likely longevity
- non-visual factors affecting the setting of the historic asset

In addition I am aware of the guidance prepared by Cadw on the setting of historic assets that in an annexe to TAN24 . This document outlines the principles used to assess the potential impact of development or land management proposals on the settings of all historic assets but is not intended to cover the impact on the setting of the historic environment at a landscape scale.

The document advises that “Setting is the surroundings in which a historic asset is understood, experienced and appreciated, embracing present and past relationships to the surrounding landscape.....The setting of a historic asset is not fixed and can change through time as the asset and its surroundings evolve. These changes may have a negative impact on the significance of an asset; for example, the loss of the surrounding physical elements that allow an asset to be understood, or the introduction of an adjacent new development that has a major visual impact. But changes can also have a positive impact that may enhance the setting, such as the removal of traffic from part of a historic town, or the opening up of views, or the return of a sense of enclosure to sites where it has been lost”

#### Conclusion

The area is rich in cultural heritage assets both designated and undesignated. The submission identified 113 heritage assets, of which 36 are within the application site and 1 is a scheduled monument the others on the Historic Environment Record. As such the assessment of those assets would be made by Cadw and CPAT and GGAT. 10 Scheduled Monuments and a Registered Historic Park and Garden (within BBNP) were outside the site and Cadw are the consultee in respect of those assets. 22 listed buildings were within the study area (outside the site) and of those 8 were identified as having the potential to be affected by the ZTV ( 7 within Powys County Council area) and individual assessment of those were undertaken.

The conclusions of Appendix 8A Heritage Desk based Assessment are not disputed. It is not considered that the proposal would affect the setting of the listed buildings within Powys County Council area.

As such I would have no objections to the proposal on built heritage grounds.

#### PCC Countryside Access & Recreation

Thank you for consulting the Countryside Services and Outdoor Recreation team about this application. This response relates to public rights of way and common land.

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

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

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

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

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

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

A plan showing the affected area of the two commons and public rights of way is attached.

#### PCC Planning & Highway Ecologist

Thank you for your consultation with regards to planning application 20/0738/FUL which concerns an application for the construction of complementary restoration earthworks to create 2 looped landform platforms (part in cutting and part on embankment) with associated drainage infrastructure and areas of landscaping and habitat creation to create a flexible and adaptable area of land that could be used for a variety of uses including agriculture, nature conservation, leisure, tourism and industrial, research and development/business uses (potentially including a

proposed rail testing, research and development and storage facility). (Cross-boundary application see Neath Port Talbot CC Application ref. P2020/0362) at Land at And Surrounding Nant Helen Open Cast Coal Site, Powys And Onllwyn Distribution Centre, Neath Port Talbot.

The following response is a combined response on behalf of the Powys County Council and Neath Port Talbot Council Ecologists.

We have reviewed the Environmental Statement and associated information with regards to impacts to ecology as a result of the proposed development and have the following comments:

The ES identifies that a full suite of ecology surveys have been undertaken for the site and surrounding vicinity over the 2018 and 2019 survey seasons, these surveys have considered the following ecological features:

- Extended Phase 1 Habitat Survey
- National Vegetation Classification (NVC)
- Fungi
- Invertebrates
- Amphibians
- Reptiles
- Breeding Birds
- Wintering Birds
- Riparian Mammals – otter and water vole
- Bat Roost – buildings/structures and trees surveys
- Bat activity – static and transects surveys
- Badger
- Dormouse
- Arboreal Mammals – red squirrel, pine marten and polecat

The assessment of the findings and impacts has been undertaken in accordance with the current National Guidelines for Ecological Impact Assessment. Having reviewed the survey methodology and effort for the above surveys it is considered that the surveys have been undertaken in accordance with methodologies following current recognised guidelines with surveys being undertaken at the optimal time of the year and the effort employed was appropriate for the nature and scale of the site affected by the proposed development.

In addition to the surveys identified above consideration was given to the potential for the proposed development to result in negative impacts – directly or indirectly – to statutory designated sites in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) would be required. Appendix 7R of the ES comprises a Report on Preliminary Information to inform a Habitats Regulations Assessment (HRA) Stage 1: Screening produced by Ove Arup & Partners Ltd dated 17<sup>th</sup> January 2020. Consideration was given to European Sites present within 10km of the proposed development – this identified two sites:

- Coedydd Nedd a Mellte SAC – with two compartments approximately 4.2km and 6.7km east of the proposed development site
- Cwm Cadlan SAC – 9.5km east of the proposed development site

The report has considered the potential for the above SACs to be affected by the proposed development, it has been identified that potential effects to the SACs would be limited to water quality effects as a result of pollutants or high sediment load in surface water runoff from construction areas and air quality effects through increase in levels of nitrogen oxides, sulphur dioxide and ammonia. The screening assessment has screened both of the sites and concluded that as neither site is hydrologically connected to the proposed development site there would be no pathway for effects from changes in water quality and given the distance/spatial separation of the SACs from the proposed development any changes in air quality would not result in any negative effects – these conclusions have also taken into account the potential need for mitigation in light of recent case law and have identified that no mitigation would be required to avoid, reduce or cancel potential effects to the SACs. Having reviewed the report and associated information we are satisfied with the approach and scope of the HRA Screening Assessment and agree with the conclusion that there would be no likely significant effect to the SACs and their associated features either alone or in combination with other plans or projects and that no further assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) would be required.

A wider search area of 15km was also applied for European Sites designated for Marsh Fritillary which identified one site:

- Blaen Cynon SAC – 6 compartments, with the closest being approximately 10.4km east of the proposed development site.

Potential impacts to the feature of the Blaen Cynon SAC have been identified as loss of habitat or fragmentation of the meta populations associated with the SAC – Marsh Fritillary are known to range up to 15km from its primary habitat – it was also identified that a population of marsh fritillary are known to be present in the Wildlife Trust Reserve approximately 1.5km west of the proposed development site. Surveys undertaken at the site identified that whilst purple moor grass and rush pasture which support the larval foodplant for this species is present within and adjacent to the site no evidence of marsh fritillary was found during dedicated invertebrate surveys and the habitat present was found to be largely unsuitable for this species due to its poor condition as a result of agricultural improvement and overgrazing resulting in little or no growth of the larval food plant. The report therefore concludes that it is unlikely that any metapopulations of marsh fritillary associated with the SAC (or the Wildlife Trust Reserve) occur within the site. The report also concludes that whilst there would be a loss of low suitability habitat within the site this would be a very small proportion of the suitable habitat in the wider area - these conclusions have also taken into account the potential need for mitigation in light of recent case law and have identified that no mitigation would be required to avoid, reduce or cancel

potential effects to the SAC. Having reviewed the report and associated information we are satisfied with the approach and scope of the HRA Screening Assessment and agree with the conclusion that there would be no likely significant effect to the Blaen Cynon SAC and its associated features i.e. marsh fritillary either alone or in combination with other plans or projects and that no further assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) would be required.

Consideration was given to the potential for the proposed development to impact Nationally designated sites, 12 Sites of Special Scientific Interest (SSSI) were identified within 15km of the proposed development site. The ES identifies that the Nant Llech SSSI is hydrologically connected to the proposed development site and as such there is a potential that the SSSI habitats could be adversely affected by pollution events and/or surface water run-off contaminated with a high sediment load. In light of the nature of the proposed development the ES concludes that any adverse effects would be temporary, and reversible. Pollution control measures have been identified within the ES and Appendix 3B – Outline Construction Environmental Management Plan, the outline measures identified are considered acceptable and appropriate to minimise the risk of impacts from the proposed development. It is noted that NRW have identified in their response dated 18<sup>th</sup> June 2020 that subject to the outlined pollution prevention measures being implemented the proposed development would not be likely to damage the features for which the Nant Llech SSSI is designated and have **recommended that a pre-commencement condition requiring the submission of a detailed Construction Environmental Management Plan is included should you be minded to approve the condition, we agree with this recommendation and consider that this requirement is necessary in order to ensure the development complies with the requirements of PCC LDP Policy DM2 and NPTC LDP Policies EN6 and EN7.**

The ES concludes that no direct or indirect effects on any of the others SSSIs are anticipated. The closest sites are: the Gors Llwyn, Onllwyn SSSI, located approximately 800 m east of the Site, the SSSI is separated from the Site by the A422 and has no hydrological connections. The conclusions regarding the lack of potential for impacts to the other SSSIs identified within 15km of the proposal is considered to be acceptable.

Five SINCs have been identified within 2km of the proposed development site – the closest of which is approximately 200m east. The ES concludes that there is significant spatial and physical separation of the proposed development site from these SINCs, and as such no effects (either direct or indirect) are considered likely. Having reviewed the submitted information we are satisfied that the conclusion of no negative impacts to these locally designated sites is appropriate.

A number of parcels of Ancient Woodland listed on the Ancient Woodland Inventory have been identified within 1km of the proposed development site, one of these parcels is located within the proposed development site itself and the proposed development would result in an area of this habitat being lost. Planning Policy Wales Section 6.4.26 identifies that *'Ancient woodland and semi-natural woodlands and*



*individual ancient, veteran and heritage trees are irreplaceable natural resources, and have significant landscape, biodiversity and cultural value. Such trees and woodlands should be afforded protection from development which would result in their loss or deterioration unless there are significant and clearly defined public benefits; this protection should prevent potentially damaging operations and their unnecessary loss.*' Whilst this area of woodland has been identified as Plantation on Ancient Woodland Site in the Ancient Woodland Inventory evidence in the of a Technical Note – Nant Helen – Investigation of Soils within Planted ancient Woodland Site dated 28<sup>th</sup> April 2020 (Appendix 7Q of the ES) has been submitted with the application to demonstrate that the 'PAWS' is in fact located within the excavation area of the former Abercrave/Gwaunton surface mine and that the current plantation is on backfilled material following mining rather than on in situ woodland soils. An investigation of the soils within this area was undertaken with four soil pits being dug to a depth of approx. 1m to expose the soil profile and provide material for examination. The Technical Note identifies that *'all four soil pits comprised backfilled Carboniferous Shale material. Soil Pits 1 and 2, and particularly Pit 2, had burnt colliery shale indicating an origin as 'above ground' deposited colliery waste. The predominantly clay profiles of Pits 3 and 4 were likely to be surfaced mined overburden.'* The Technical Note concludes that *'the area now denoted as PAWS was surface mined during the extensive Abercrave/Gwaunton scheme. The in situ woodland soils were most likely disposed of within the progressive workings, as was the general practice into the early 1990s. Hence, the status of the ancient woodland site is more accurately referred to as having been 'destroyed'. The planting of the current conifer plantation after the backfilling of the surface mine workings could give the impression that it is a PAWS, whereas it is simply a plantation on a destroyed ancient woodland site'*. Having reviewed the evidence and assessment provided with regards to the area identified as PAWS Ancient Woodland habitat on the Ancient Woodland Inventory we are satisfied that the habitat present does not actually meet the requirements which would qualify it as ancient woodland habitat and therefore would not require the level of protection afforded to habitats of this type under National and Local Planning Policies and is instead dealt with in terms of general woodland habitat loss. It is also recommended that the Applicant approaches NRW with the supporting evidence submitted with this application to request that the area identified as PAWS is removed from the Ancient Woodland Inventory to avoid future confusion.

The ES identifies that the construction and associated site clearance with regards to the proposed development will result in the loss of existing habitat within the site boundary including habitats of conservation significance i.e. Purple moor grass/marshy grassland, acid grassland (unimproved/semi-improved), dry and wet heathland, broadleaved and conifer woodland (including notable species namely common wintergreen), waterbodies (including those supporting notable species: lesser bulrush, floating bur-reed, greater tussock sedge and spiked water milfoil), sphagnum rich bog/mire habitat (including the notable species: royal fern and floating bur reed), flushes, swamp, ditches, ponds, streams, and vegetated coal spoil (including the notable species: viviparous fescue). Table 7.13 of the ES identifies the extent of habitat loss as a result of baseline and restored site which totals 87.6 Ha as

well as extent of habitats to be created (of greater value) and habitats to be enhanced which totals 226.12 Ha. With the exception of semi-improved acid grassland the extent of habitats of note present on the site which will be lost as result of the proposed development have been identified as being re-created/enhanced over an area which exceeds the area that would be lost. With regards to semi-improved acid grassland habitat, whilst this appear to be being enhanced over an area which is less than that which would be lost this habitat type would also be included within the creation/enhancement of dry heath/acid grassland (lichen and fungi habitat) of which 3.41 Ha would be lost and 101 Ha would be created/enhanced. The ES identifies that the long term maintenance and monitoring of newly established habitat and other habitats which will be retained and protected will be detailed within an Ecological Management and Monitoring Plan (EMMP), the proposals with regards to creation and enhancement of habitats to address the identified habitat loss as a result of the proposed development are considered to be appropriate and acceptable, in addition the principles outlined with regards to the EMMP are considered to be acceptable and **it is therefore recommended that a condition to secure the submission of a detailed Ecological Management and Monitoring Plan building on the principles outlined in Section 7.20 of the ES for approval by the LPA is included to ensure compliance with Powys LDP Policy DM2 and NPTC LDP Policies EN6 and EN7 should you be minded to approve the application– it is recommended that the condition states that the EMMP covers a period of 25 years.**

The ES and associated survey reports detail the finding of surveys undertaken to assess the implication of the proposed development to target species, details of the identified impacts and proposed mitigation have been summarised in Table 7.14 (Appendix 7O of the ES). The assessment and identified mitigation are considered to be appropriate with regards to the impacts identified for each species considered, Section 7.20 of the ES identifies the production of detailed CEMP, EMMP and Ecological Protection Plan (EPP) and outlines measures which would be implemented to deliver the identified mitigation measures. The outline measures include pre-commencement surveys for breeding birds, bats, otter, badger and reptiles, implementation of a reptile trapping and translocation programme, identification of species translocation protocols, Ecological Clerk of Works supervision, protection of retained habitats. In addition it is identified that an Invasive Non-Native Species Management Plan will be identified to ensure control and prevention of spreading of INNS during and post construction. Having reviewed the findings of the surveys, assessment of likely impacts and proposed mitigation measures it is considered that the proposed development would comply with the requirements of relevant local and National Planning Policies with regards to biodiversity, the implementation of the identified mitigation and enhancement measures are fundamental to ensuring the compliance with the relevant Policies and legislation in relation to nature conservation, as identified previously the outline principles identified with regards to the EMMP, CEMP, INNSMP and EPP are considered to be appropriate to enable the application to be determined however **it is essential that submission of detailed versions of these documents are secured through appropriately worded pre-commencement planning**

**conditions including appropriate details of mitigation, monitoring and remediation protocols, the management and monitoring plans will need to be of sufficient duration to ensure establishment of the relevant habitats/features of ecological value – it is recommended that the EMMP covers a period of 25 years.**

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

In conclusion, having reviewed the information and associated assessments submitted to support the application it is considered that the proposed development would not result in the loss of biodiversity in the long term subject to implementation of the proposed mitigation and enhancement measures, therefore should you be minded to approve the application inclusion of the following conditions is recommended in order to ensure that the proposed development is undertaken in accordance with relevant National and Local Planning Policies and associated legislation:

*No development shall take place (including demolition, ground works, vegetation clearance) until a detailed Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP must include (but not be limited to) the following:*

- a) *Risk assessment of potentially damaging construction activities.*
- b) *Construction Methods: details of materials, how waste generated will be managed.*
- c) *General Site Management: details of the construction programme including timetable, details of site clearance, details of site construction drainage, containment areas, implementation of appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse and surface water drain.*
- d) *Resources Management: details of fuel and chemical storage and containment, details of waste generation and its management, details of water consumption, wastewater, and energy use.*
- e) *Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- f) *Pollution Prevention Plan: demonstrating how relevant Guidelines for pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.*
- g) *Invasive Non-Native Species Management Plan.*
- h) *Details of task and security lighting to avoid disturbance of habitats of importance to crepuscular or nocturnal species.*
- i) *Responsible persons and lines of communication and emergency contact details.*
- j) *Use of protective fences, exclusion barriers and warning signs.*

*The approved CEMP shall be adhered to and implemented throughout the site preparation and construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.*

Reason: To comply with Powys County Council's LDP Policy DM2 and Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

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

- a) *Risk assessment of potentially damaging construction activities.*
- b) *Details of Pre-commencement Surveys, including methodologies and timing.*
- c) *Identification of "biodiversity protection zones".*
- d) *Reptile trapping and relocation method statement including details of receptor sites.*
- e) *Vascular Plant Species translocation method statements (specifically common wintergreen, lesser bulrush, floating bur-reed, greater tussock sedge and spiked water milfoil, royal fern and viviparous fescue).*
- f) *Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts to retained features of ecological importance during construction (may be provided as a set of method statements).*
- g) *The location and timing of sensitive works to avoid harm to ecological features of importance.*
- h) *The times during construction when specialist ecologists need to be present on site to oversee works.*
- i) *Responsible persons and lines of communication.*
- j) *The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*
- k) *Use of protective fences, exclusion barriers and warning signs.*

*The approved EPP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.*

Reason: To comply with Powys County Council's LDP Policy DM2 and Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

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

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

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

Reason: To comply with Powys County Council's LDP Policy DM2 and Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

*No development, demolition, earth moving shall take place or material or machinery brought onto the site until protective fencing and warning signs have been erected on site in accordance with the approved Construction Environmental Management*

*Plan and Ecological Protection Plan. All protective fencing and warning signs will be maintained during the construction period in accordance with the approved details.*

Reason: To comply with Powys County Council's LDP Policy DM2 and Neath Port Talbot Council Policies SP15, SP16, EN6 and EN7 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016

#### PCC Land Drainage Officer – 29<sup>th</sup> May 2020

Having assessed the Planning Application Ref 20/0738/FUL, the SuDS Approval Body (SAB) deem that the construction area is greater than 100m<sup>2</sup> and therefore this proposed development will require SAB approval prior to any construction works commencing onsite.

Please contact the SAB Team on 01597 826000 or via email [sab@powys.gov.uk](mailto:sab@powys.gov.uk)

For further information on the requirements of SAB and where relevant application forms/guidance can be accessed, please visit the following website  
<https://en.powys.gov.uk/article/5578/Sustainable-DrainageApproval-Body-SAB>

If for any reason you believe your works are exempt from the requirement for SAB approval, we would be grateful if you would inform us so we can update our records accordingly.

The requirement to obtain SAB consent sits outside of the planning process but is enforceable in a similar manner to planning law. It is a requirement to obtain SAB consent in addition to planning consent. Failure to engage with compliant SuDS design at an early stage may lead to significant un-necessary redesign costs.

#### PCC Highways, Transport and Recycling

The County Council as Highway Authority for the County Class I Highway, A4221 wish the following recommendations/observations be applied

#### Recommendations/Observations

Thank you for consulting the Highway Authority (HA) on this planning application, which covers the construction of complementary restoration earthworks and associated infrastructure on land at and, surrounding Nant Helen Open Cast Coal Site, Powys.

This application is supported by an Environmental Statement (ES). Table 2.2 of the E.S. makes clear that the transport considerations in relation to the development have been “scoped out” as the proposals will not require materials to be either imported in or exported from the site and as such, the vehicular impacts on the surrounding highway network are considered to be minimal.

The ES does not however, consider or quantify the level of plant and operatives that will be required to undertake the works and it does not clarify where such movements will occur. Further detail/clarification on this matter is requested

Further, Drawing CG1021 P01, indicates that proposed cutting and embankment works are planned for the north east area of the site, which are in close proximity to the existing vehicular access from the A4221 county highway; the proposed works appear to effectively sever the existing internal haul road. Further detail is requested in terms of the effect this will have on the current main access from the A4221.

I trust the above matters will be addressed before this application is determined.

### PCC Environmental Health Service

Thank you for the consultation in respect of this application, given that Environmental Protection responses in respect of this application have cross boundary effect I have worked closely with Mr Gareth Liley of Neath Port Talbot Council in the lead up to producing this response.

This is a large construction project, of 18 months, with sensitive receptors in close proximity. The two main concerns from an EP point of view are the impact of dust and noise on the amenity of nearby residential receptors.

Whilst it is accepted that there will be some disruption of nearby residential receptors it is important to ensure that appropriate controls are put in place to mitigate these effects and protect amenity.

#### Dust

Large scale earthworks such as this do have the potential to cause dust, however with suitable controls in place there would be no need for it's impacts to be detrimental to the amenity of nearby residents. The following pre-commencement condition is therefore required on any consent given:-

1. Prior to the commencement of development a Dust Management Action Plan shall be submitted to and approved by the Local Planning Authority. The approved plan shall be implemented at all times for the duration of operations at the site.

#### Noise

As an existing opencast mine this site already has a number of conditions attached to it, which control noisy operations on site. It is proposed that these controls are replicated for majority of the site.

The existing limits would however be prohibitive of working on the Northern Embankment, which is an area in close proximity to residential properties. The applicant has therefore assessed this noise in accordance with BS5228, which can be seen in the relevant chapter of the ES and is the appropriate standard for a construction project.

In order to meet the standard at all properties, the developer needs to construct a noise barrier to mitigate noise. This will need to be in place prior to commencement of the construction works and built in accordance with the detail provided.

The applicant is requesting that the additional noise limits apply to the northern embankment from 7am in the morning. Given the length of time of the project and disruption to residents this needs to be brought back until 8am to protect their amenity. This will not prevent preparatory works from commencing onsite, but will provide some additional respite to residents from the heaviest machinery onsite.

It is important that works are carried out onsite in a considered manner in order to ensure that levels from the assessment are not breached in the real world. Therefore noise limits will need to be attached to any consent given and also pre-commencement noise management plan submitted and agreed.

The following conditions are therefore proposed:-

2. Prior to the commencement of development a Noise Monitoring and Management Action Plan shall be submitted to and approved by the Local planning Authority. The approved plan shall be implemented at all times for the duration of operations at the site.
3. Prior to the commencement of construction of the northern embankment the proposed 5m screen fence shall be constructed in position as identified in Figure 10.1: Noise Sensitive Receptors for Northern Embankment). Details of the construction and design of the fence (providing a minimum of 5dB attenuation of noise) shall be submitted to and approved by the Local Planning Authority prior to its construction and it shall be constructed and maintained in accordance with the approved details for the duration of works for the construction of the northern embankment.
4. Except in an emergency which shall be notified to the Local Planning Authority as soon as practicable, development, which includes the starting up of plant and machinery, or other activities associated with the development (other than water pumping, servicing, environmental monitoring, maintenance and testing of plant) authorised or required by this permission shall be limited to 0600 - 2200hrs Monday to Friday and 0700 - 1300hrs on Saturdays.
5. Notwithstanding condition 2 above, works related to the construction of the northern embankment, including all ground works involving excavations, shall be limited to the following times, between 07.00 to 18.00 hours Mondays to Fridays (excluding Bank/Public Holidays) and 08.00 to 13.00 hours on Saturdays.
6. Noise arising from operations at the site as measured at any noise sensitive location shall not exceed background (LA90) plus 10dB LAeq,1hr or 55dB LAeq,1hr (free field), whichever is the lesser, during normal working hours (0700 to 1900 hours Monday to Friday excluding Bank/Public Holidays and 08.00 and 12.00 hours on Saturdays). At all other times the noise arising from operations at the site shall not exceed 42dB LAeq, 1hr (free field) at any noise sensitive location.
7. Notwithstanding the noise level limits set out in Condition 6, the level of noise from operations consisting of the construction of the northern embankment, shall not exceed the following levels, measured as dB LAeq,1hr (free field), at the noise sensitive locations specified below (as identified on Figure 10.1: Noise Sensitive



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

Receptor 1 - 61

Receptor 2 - 57

Receptor 3 – 60

Receptor 4 – 54

#### PCC Building Control

No response received to date.

### **Representations**

The application has been publicised by display of site notices and in the press, to date 41 objections and one letter of support have been received from members of the public. Material planning concerns raised are:

- The height and length of the earthwork embankment above Caehopkin is to be built on marshy, unstable, previously worked ground will be liable to slippage and will be a danger to the village.
- Surface Water Flooding is already a major problem in Caehopkin and this will make it worse.
- Ongoing maintenance of drainage features is uncertain
- Visual impact
- Loss of light from overbearing landform
- Impact on biodiversity and ecosystems
- Noise pollution and excessive hours of working
- Adverse impact on tourism
- Highway safety
- Loss of PROWs
- Not enough information available
- Lack of consultation during COVID19

### **Planning History**

19/1899/REM - Variation of condition 45 of planning approval 18/1070/REM to allow for a revised restoration scheme – Planning Permission Granted subject to a Section 106 Agreement – 8<sup>th</sup> June 2020

18/1070/REM – Variation of Condition 2 of planning approval P/2010/0217 to allow an extension of time to allow extraction of all the coal and completion of restoration – Planning Permission Granted subject to Section 106 Agreement – 29<sup>th</sup> August 2019

18/1071/DIS – Discharge of Condition 54 of planning consent P2011/0217 in relation to revised restoration scheme - Withdrawn

DIS/2016/0153 - Discharge of condition 54 of planning approval P/2011/0217 - provision of detailed restoration scheme – Approved – 2<sup>nd</sup> February 2017

P/2011/0217 - Western extension to Nant Helen surface mine for the purposes of coal extraction along with completion of coaling at existing site and associated ancillary development including restoration and subsequent aftercare of the full development site - Planning Permission Granted subject to S106 Agreement – 9<sup>th</sup> March 2012

P2008/0850 – Construction of drainage channel – Planning permission granted – 16<sup>th</sup> November 2011

PP 106-98-005/PP 106-12-001 - Nant Helen Extension – Planning permission Granted at Appeal – 21<sup>st</sup> July 1998

### **Principal Planning Constraints**

Potential Impact in terms of land stability

Potential impacts on the water environment

Potential impact on the landscape and visual impact

Potential impact on biodiversity and the natural environment

Potential Impact on cultural heritage features

Potential impact on amenity

### **Principal Planning Policies**

#### **National**

The Well-being of Future Generations (Wales) Act 2015

The Environment (Wales) Act 2016

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Marine and Coastal Access Act 2009

Planning Policy Wales (Edition 10, 2018)

Building Better Places (July 2020)

Technical Advice Note 5 – Nature Conservation and Planning (2009)

Technical Advice Note 11 – Noise (1997)

Technical Advice Note 12 – Design (2016)

Technical Advice Note 13 – Tourism (1997)

Technical Advice Note 15 – Development and Flood Risk (2004)

Technical Advice Note 16 – Sport, Recreation and Open Space (2009)

Technical Advice Note 23 – Economic Development (2014)

Technical Advice Note 24 – The Historic Environment (2017)

### **Local Planning Policy**

Powys Local Development Plan (April 2018)

Strategic Policy SP7 - Safeguarding of Strategic Resources and Assets

Policy DM2 – The Natural Environment

Policy DM4 – Landscape

Policy DM6 – Flood Prevention Measures and Land Drainage

Policy DM7 – Dark Skies and External Lighting

Policy DM8 - Minerals Safeguarding

Policy DM9 - Existing Mineral Workings

Policy DM10 – Contaminated and Unstable Land

Policy DM13 – Design and Resources

Policy DM14 – Air Quality Management

Supplementary Planning Guidance: Biodiversity and Geodiversity (October 2018)

Supplementary Planning Guidance: Landscape (April 2019)

### **Officer Appraisal**

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

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

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

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

- a. Long-term thinking – balancing the need to take action to address current issues with the need to meet long term needs of Wales.
- b. An integrated approach – considering how a body’s objectives may impact upon the social, economic, environmental and cultural well-being and considering how an individual body’s objectives impact upon other public bodies’ objectives.

- c. Engagement – involving the people and communities with an interest in the wellbeing objectives, engaging them in finding sustainable solutions.
- d. Collaboration – acting collaboratively with other bodies, or different parts of a body acting together in a co-productive way, to assist in the achievement of the body's objectives.
- e. Preventative action – deploying resources to undertake action now in order to prevent problems occurring or getting worse.

Well-being goals identified in the Act are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

The Environment (Wales) Act 2016 has been designed to complement the WFG Act. It imposes a duty to require all public authorities, when carrying out their functions in Wales, to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions. In doing so, public authorities must also seek to “promote the resilience of ecosystems”.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. For the avoidance of doubt, the development plan in this instance is the Powys Local Development Plan 2011-2026.

### **Principle of Development**

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

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

A core principle of achieving sustainable development is using previously developed land in preference to greenfield land where possible. The applicant considers that most of the site associated with the present-day extent of the surface mine would satisfy the definition of previously developed land and consequently development of it would be broadly acceptable. The Local Planning Authority does not concur with that view.

PPW defines previously developed (also known as brownfield) land as that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage of the development is included, as are defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development management procedures.

Excluded from the definition are:

- land and buildings currently in use for agricultural or forestry purposes;
- land which has not been developed previously, for example parks, recreation grounds, golf courses and allotments, even though these areas may contain certain urban features such as paths, pavilions and other buildings;
- land where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;
- land which is species rich and biodiverse and may qualify as 'section 7 habitat' or be identified as having nature conservation value; and
- previously developed land subsequently put to an amenity use.

In this case, provision for restoration has either been made by the imposition of a planning condition or it is land where the remains of the activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings. In both cases these are exclusions from the definition of previously developed land and the proposal cannot be considered to be on 'brownfield' previously developed land.

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

While this application does not propose specific tourism or industrial uses (that would require separate consent), agricultural, conservation or leisure uses on the new landform would amount to development appropriate for a countryside location.

Moreover, given its Valleys location and relationship to numerous communities surrounding the site, both in Powys and Neath Port Talbot, this is not only considered to accord with the wider objectives within PPW and the LDP to place sustainable placemaking at the heart of the planning process, but also the WG's

recent policy guidance [\*Building Better Places: The Planning System Delivering Resilient and Brighter Futures\*](#) which focusses on post Covid-19 recovery in Wales. In this respect, the scheme will deliver healthy, thriving active places with a focus on a positive, sustainable future for our communities. This would be whether it is focussed on leisure and tourism opportunities which improve access to recreation and natural green spaces, or through creation of direct and indirect opportunities for barrier free development, jobs and skills.

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

## **Environmental factors**

### **Geotechnical Issues (land stability and contamination)**

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

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

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

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

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

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

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

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

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

The desk-based assessment undertaken in Chapter 6 of the Environmental Statement has identified the ground conditions expected beneath the embankment – old mine workings and mine entries; opencast backfill of varying depths; the stratigraphy of the undisturbed areas of the Middle and Lower Coal Measures Formations and the local hydrology. Parts of the site have been extensively worked through surface mining activities since c.1946 with opencast activities still ongoing within the Nant Helen site. Coal mining activities have constantly altered the topography of the site over the last century and the geological environment is varied with many features largely pertaining to coal mining, such as outcropping, entries, drifts, shafts and seams. It is accepted that all these features can potentially create land instability that could constrain the proposed development if not properly considered. The construction of the embankment will need to address these issues and old mine workings may need to be treated, marshy land may need to be drained and ‘softer’ material removed, load bearing capacity of materials considered, drainage provided, outer slopes engineered to below the angle of repose etc.

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

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

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

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

The detailed geotechnical design of the scheme would ensure slope stability of the ground, cuttings and embankments are adequate for the selected development option. The design would consider ground hazards associated with historical mineworking's and subsidence due to potential change in groundwater conditions. This would include a detailed mining and hydrogeological impact assessment, and potentially treatment of shallow mine workings. Should mineworking's treatment be required any impacts on hydrogeology would be assessed through detailed studies on design mitigation.

The requirement for the Local Authority to approve a detailed geotechnical design can be imposed by condition which will ensure the appropriate safeguards are in place. The design will also consider the stability of the former opencast backfill of the Abercraf / Gwaunton site, although having been in situ for over 45 years it is anticipated that any ground settlement associated with the opencast activity will have long since ceased.



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

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

LDP Policy DM10 states that development proposals on contaminated or unstable land will be permitted where they do not result in any additional problems of ground instability or contamination either on or off site and shall remediate the contamination/instability. Sufficient information has been submitted to demonstrate that there are technical solutions capable of ensuring ground stability is remediated where necessary and that any contamination can be satisfactorily remediated. Conditions are necessary to require submission of detailed investigations and design prior to development commencing on site.

LDP Policy DM2 states that development proposals shall demonstrate how they protect, positively manage and enhance geodiversity interests. There are no statutory designated areas specifically of geological interest present within the site boundary or within the proposed development's area of influence. Neither are there any 'Regionally Important Geological and Geomorphological Sites' (RIGS) within a 1km radius of the site.

### **Hydrological Impact (sustainable drainage, water quality and flood risk)**

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

Concern has also been expressed about the potential impact from the two water features to be created by the Nant Helen Opencast Mine Restoration Scheme. However, these features have already been approved as part of the mine restoration scheme and fall outside of the application site. On that basis they are not re-considered in this report.

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

It also states that planning authorities should be aware of the risk of surface water flooding, usually caused by heavy rainfall, and ensure developments are designed and planned to minimise potential impacts. Development should not cause additional run-off, which can be achieved by controlling surface water as near to the source as possible by the use of SuDS (para 6.6.27). The Powys Land Drainage Section has confirmed that SuDS will be required in this case and a pre-application SuDS has been submitted to the Land Drainage Engineers for comment.

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

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

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

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

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

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

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

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

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

- Culverts to tributaries of the River Tawe and River Dulais and drainage ditches;
- Cascading features associated with the culverts;
- Diversions to drainage ditches on site; and
- Removal or relocation of ponds.

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

#### Surface Water Quality

The most likely sources of surface water impacts are:

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

#### Groundwater Quality

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

### Flood Risk

The site is classified as being at low risk of flooding from coastal and fluvial sources. Areas at risk of fluvial flooding are localised to the areas adjacent to the River Tawe, River Nant Llech and River Dulais, outside of the site boundary. Although the earthworks will involve changes to ground levels, it is not considered that this will present a flood risk to the proposed development as the site is not within an area deemed as high flood risk.

Surface water run-off has the potential to exacerbate the risk of flooding at the River Tawe, River Nant Llech and River Dulais, however, site run-off will be captured within the attenuation features and discharged at greenfield run-off rates, or to a lower discharge rate as specified for particular catchments as part of the restoration scheme. This will be dealt with via SuDS.

### Design mitigation

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

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

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

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

Introducing culverts, cascading features and diverting ditches will change the drainage solution underpinning the design of the approved Nant Helen Mine restoration. Mitigation will be required within the detailed design of the embankment

and these details can be required by a condition attached to any grant of planning permission. There is no reason to believe at this stage that an adequate and acceptable drainage design cannot be provided. Ongoing maintenance of the system provided will be the responsibility of the landowner.

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

LDP Policy DM6 states that development proposals must avoid unnecessary flood risk by assessing the implications of development within areas susceptible to all types of flooding; any development that unacceptably increases risk will be refused.

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

### **Landscape and Visual Impact**

In addition to public concern about the visual impact of the proposals (in particular the proposed northern embankment) both NRW and BBNPA have expressed concerns in relation to its visual impact when viewed from the Brecon Beacons National Park.

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

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

PPW confirms that planning authorities have a statutory duty to have regard to National Parks and AONB purposes. This duty applies in relation to all activities affecting National Parks and AONBs, whether those activities lie within, or in the setting of, the designated areas. The designated landscapes should be drivers of the sustainable use and management of natural resources in their areas, and planning authorities should have regard to their identified special qualities in the exercise of their functions and any relevant management plans (para 6.3.5). In this case the site is on the periphery of the Brecon Beacons National Park and therefore the Authority will need to consider the impact on the National Park both directly and on its setting.

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

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

### Landscape Character

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

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

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

A small area of the north western part of the site extends into the Wooded Tawe Valley Landscape Character Area, which has a medium value, and a small area in the south eastern part of the site extends into the Head of Dulais Valley Landscape Character Area also of medium value.

The assessment concludes that the Nant Helen Reclaimed Uplands LCA has the capacity to accommodate the earthworks without affecting its overall integrity across much of the LCA, however it is susceptible to the loss of its key features. The LCA

would experience a moderate adverse effect resulting from the proposed development, where earthworks would reduce the legibility of key features; such as the Tramroad at Ystradgynlais and the alteration of previously restored land. During the construction phase the impact on the Wooded Tawe Valley would be minor adverse and the impact on the Head of Dulais Valley would be negligible.

Post construction, the introduction of engineered earthworks will result in the loss of key features of the landscape character area such as the Tramroad at Ystradgynlais and landcover that has already been restored. However, in combination with the Nant Helen Restoration, the loss of restored landcover will be offset by the filling of the opencast void, and loss of mining activity and the reduced prominence of the overburden mound and increased naturalistic character of the landform. In this respect the completed proposals in combination with proposals for restoring the surface mine, would plainly achieve betterment compared to the current environmental baseline and the negative effects these operations have on the landscape.

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

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

#### Visual Impact

The Environmental Statement (ES) considers 18 different viewpoints surrounding the site. The methodology for the assessment considers the sensitivity of the receptor, the magnitude of change and the significance of the effect.

During the proposed 73-week construction period, the ES identifies that from 10 of the 18 viewpoints there will be a major adverse visual effect. It confirms that 6 of these major adverse visual effects are on views from the BBNP (specifically viewpoints 1, 2, 3, 4, 5 and 11) and one on views towards the BBNP (specifically viewpoint 18).

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

The ES also confirms that there would be major adverse visual effects on views from viewpoint 5 (within BBNP) and moderate adverse visual effects from 5 other

locations, 3 of which are in BBNP, (specifically viewpoints 2, 3 and 4) immediately after completion of the construction period.

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

Planting of the northern embankment slopes would aid with the integration of the engineered earthworks into the adjacent wooded valley. Woodland planting would assist with;

- reinstatement of landscape character;
- integration of the engineered landform and potential future screening, dependant on future use; and
- compensation for the loss of Plantation on Ancient Woodland.

Details of the woodland species planting mix will need to be provided prior to implementation and broadleaved native woodland would be preferred as this would integrate with the surrounding woodland cover.

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

The assessment recommends that a detailed Landscape Strategy is developed, and this can be required by a condition. Given the comments of NRW, and the Council Ecologists, it is considered reasonable to require a management plan for the first 25 years given that it would potentially take that long to mitigate the impacts.

NRW also comments that, in their opinion the moderate (significant) beneficial visual effects from viewpoint 1 are overestimated. Although they agree that the development would result in a beneficial effect from viewpoint 1, this is more likely to be a negligible beneficial effect and therefore not significant. Therefore, this does not provide a sufficient offsetting against the significant adverse visual effects described above.



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

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

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

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

It therefore stands to reason that if these exceptions would apply inside National Parks then they can also reasonably be applied to developments in areas which may impact on the setting of National Parks. The socio-economic need for the development and the exceptional circumstances the applicant has put forward in support of this proposal are considered in the socio-economic section below. The identified adverse visual impact of the development for the first 15 years will therefore have to be balanced against other material considerations. In any event a condition requiring a Landscape Strategy and landscape details, for the northern embankment in particular, will be required in order to comply with Policy DM4 of the LDP. A 20 year management period will also be necessary in order to ensure the visual impacts are acceptable mitigated.

### **Cultural Heritage Impact**

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

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

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

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

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

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

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

Of the above, the asset of most significance in itself and due to the potential impacts, is ‘*The Tramroad at Ystradgynlais (Claypon’s Extension) (CH001)*’ which is a nationally important earthwork dating to the 1830s designated as a Scheduled Monument (SM). Potential impacts are on the SM and its setting.

The Tramroad is 6.44km in length and runs from Ystradgynlais across Mynydd y Drum towards where the Onllwyn Washery is today. It was built using a hybrid of horse-drawn and steam-driven technology, making it a historically significant feat of

engineering and it was a part of the Brecon Forest Tramroad which was a vitally important route for the movement of raw materials for the flourishing iron trade in the area. It is a Scheduled Monument and a heritage asset of high value. Its national importance is derived from its potential to enhance and illustrate our knowledge and understanding of the raw materials transportation network from nineteenth century iron industries.

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

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

The proposed earthworks would cross the Scheduled Monument near its eastern end, permanently burying a 450m section of it. The current design iteration shows three drainage pipes would be installed across the Scheduled Monument where the embankment crosses it. Trenches, c2.1m in width and 15m in length, would be cut into the surface of the Scheduled Monument prior to its burial. However, the exact details will be subject to Scheduled Monument Consent and could change. The cutting of the trenches and the burial under the embankment would constitute a moderate magnitude of impact; although the majority of the 6.44km long monument would not be physically affected, it is a linear feature and is understood as a line along which materials would have been transported. As a result, the loss of a section of the earthwork under the new embankment would lead to a loss of legibility as well as the removal of part of its physical fabric. Given the archaeological and historical values of this monument, this would constitute a permanent major adverse significance of effect.

In order to mitigate this, no topsoil would be removed during the construction of the embankment and any benches required to provide the necessary gradient would be cut outside of the scheduled area. Although the Scheduled Monument would remain largely intact beneath the new embankment, there would be an interruption in its legibility, with the east and western sections of it divided. This would have an adverse effect on how the monument can be understood. Any such works would require Scheduled Monument Consent to be approved by Cadw and it is likely that archaeological monitoring would be required during construction to ensure that no physical damage is done to the Scheduled Monument. This mitigation does not alter the permanent major adverse significant effect. Other cultural heritage features identified within the study area are either affected to a minor or negligible extent.

PPW recognises the need to conserve archaeological remains. The conservation of archaeological remains and their settings is a material consideration in determining planning applications, whether those remains are a scheduled monument or not

(para 6.1.23) and where nationally important archaeological remains are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in exceptional circumstances that planning permission will be granted if development would result in a direct adverse impact on a scheduled monument (para 6.1.24).

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

Cadw have confirmed that the identified major adverse effect on the Tramroad will be significant and is contrary to national planning policy contained in section 6.1.24 of Planning Policy Wales. Therefore, in their view, the Authority will need to weigh this direct significant adverse impact against the economic and other benefits.

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

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

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

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

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

Nevertheless, the earthworks proposed under this application also form part of potential enabling works to facilitate industrial uses including the Welsh

Government's proposed rail testing, research and development and storage facility, called the Global Centre of Rail Excellence (GCRE). The Pre-Application Consultation (PAC) for that project is due in August 2020, and an application to both LPAs is due to be made shortly after closing of the PAC period.

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

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

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

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

In addition to the above Grampian condition, while any subsequent Scheduled Monument Consent would include substantial detail on the extent and method of works involved, an additional condition is recommended which requires full details of all works within the SM area to be approved in advance of any such works being begun.

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

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

The ES identifies that there would be no permanent effects on the cairn arising from the creation of the earthworks, however during construction and until the embankments have grassed over, there would be a temporary adverse effect resulting from the increased noise, lighting and appearance of construction activities happening only a short distance from the cairn. Overall there would be a minor magnitude of impact, resulting in a temporary **minor adverse** significance of effect. This is not significant. Cadw has confirmed that they have no concerns about the impact on the Bryn Lechwen Ring Cairn (BR327) as a temporary impact on setting will cease once development is completed.

There are 22 listed buildings were within the study area (outside the site) and of those 8 were identified as having the potential to be affected by the ZTV (7 within Powys County Council area) and individual assessment of those was undertaken.

The conclusions of Appendix 8A Heritage Desk based Assessment are not disputed by the Council's Built Heritage Officer and it is not considered that the proposal would affect the setting of the listed buildings within Powys County Council area. As such, the Built Heritage Officer has no objections to the proposal on built heritage grounds.

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

CPAT note in their response that they are in agreement with the mitigation set out in 8.10 and specifically 8.10.1 to 8.10.4 of the ES. A suitably qualified archaeological contractor will need to be engaged to complete the mitigation works outlined in accordance with an approved WSI. They suggest a planning condition to facilitate a scheme of archaeological investigation.

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

The applicant considers that in the event that there is a need to weigh heritage considerations against the proposals, it is clear that there are potential significant socio-economic benefits of the works in both scenarios, which in the planning balance weigh heavily in favour of the proposed development in addition to the 'security' that a conditional consent provides to the protection of the monument.

### **Impact on Ecology and Biodiversity**

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

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

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

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

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

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

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

LDP Policy DM2 requires development proposals to demonstrate how they protect, positively manage and enhance biodiversity and geodiversity interests including improving the resilience of biodiversity through the enhanced connectivity of habitats within, and beyond the site.

In addition, LDP Policy DM7 makes provision for dark skies, requiring development to demonstrate that external lighting proposals would not individually or cumulatively contribute to unacceptable levels of light pollution, visibility in the night sky, disturbance to local users or protected species.

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

The same is true for all bar one of the SSSI within 5km of the site. The Nant Llech SSSI is the only one that is hydrologically connected to the site and as such there is potential for the site to be affected by pollution events and surface water run-off containing high sediment loads. In light of the nature of the proposed development the ES concludes that any adverse effects would be temporary, and reversible. Pollution control measures have been identified within the ES and Appendix 3B – Outline Construction Environmental Management Plan, the outline measures identified are considered acceptable and appropriate to minimise the risk of impacts from the proposed development. It is noted that NRW have identified in their response that subject to the outlined pollution prevention measures being implemented the proposed development would not be likely to damage the features for which the Nant Llech SSSI is designated and have recommended that a pre-commencement condition requiring the submission of a detailed Construction Environmental Management Plan is included should the Authority be minded to approve the application. The Council Ecologists agree with this recommendation and consider that this requirement is necessary in order to ensure the development complies with the requirements of LDP Policy DM2.

There are 5 SINC's within 2km of the site but there is significant spatial and physical separation between the site from these SINC's, and the ES concludes that no effects (either direct or indirect) are considered likely. The Council Ecologists are satisfied that this conclusion is appropriate.

There are a number of areas of ancient woodland, within 1 km of the site. There is one area of recorded PAWS ancient woodland within the site boundary. However, the submitted evidence would suggest that the area of conifer plantation to be lost as a result of the development is not PAWS as it was worked in the 1970s as part of the Abercrave/Gwaunton surface mine and therefore any ground flora, soils and seed beds have been destroyed. The woodland has been demonstrated to be on backfilled material/overburden and not, in-situ woodland soils. The Council Ecologists have commented that having reviewed the evidence and assessment provided with regards to the area identified as PAWS Ancient Woodland habitat on



the Ancient Woodland Inventory we are satisfied that the habitat present does not actually meet the requirements which would qualify it as ancient woodland habitat and therefore would not require the level of protection afforded to habitats of this type under National and Local Planning Policies and is instead dealt with in terms of general woodland habitat loss.

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

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

The revised restoration scheme (Figure 1.2) includes the creation of new habitats within parts of the site including acid grassland, enclosed pasture and broadleaved woodland. As such, these areas of the site will be re-established as acid grassland (once the restoration scheme commences). The restoration scheme (Figure 1.2) also details the retention of existing habitats namely acid grassland and waterbodies (as shown on the restoration plan), as well as purple moor grassland and heathland (shown on the Phase 1 plan) within the site boundary. These habitats will be lost during construction.

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

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

A habitat creation and restoration plan illustrates a series of notable habitats to be created include fen-mire, heathland, waterbodies and broadleaved woodland, in areas currently of less nature conservation value or which will be disturbed during

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

The ES identifies that the long term maintenance and monitoring of newly established habitat and other habitats which will be retained and protected will be detailed within an Ecological Management and Monitoring Plan (EMMP), the proposals with regards to creation and enhancement of habitats to address the identified habitat loss as a result of the proposed development are considered by the Council Ecologist to be appropriate and acceptable, in addition the principles outlined with regards to the EMMP are considered to be acceptable and **it is therefore recommended that a condition to secure the submission of a detailed Ecological Management and Monitoring Plan building on the principles outlined in Section 7.20 of the ES for approval by the LPA is included to ensure compliance with Powys LDP Policy DM2 and should the Authority be minded to approve the application– it is recommended that the condition states that the EMMP covers a period of 25 years.**

The nature of habitats present on site and the likely impacts of the proposed development, in combination with mitigation, means that there will be little impact on protected species. The most notable interface with protected species is that of reptiles. Implementation of a reptile trapping and relocation programme, in accordance with a reptile method statement will be undertaken by a suitably qualified ecologist prior to construction. Translocation is proposed for reptiles found during this survey. A suitable receptor site for reptile translocations will need to be identified prior to any reptile mitigation taking place and be agreed by the local planning authority ecologists and the site's landowner. It is anticipated that adjacent/connecting habitats will be suitable, and which would also be subject to further enhancements for reptiles. It is proposed this is secured through planning condition.

The ES and associated survey reports detail the finding of surveys undertaken to assess the implication of the proposed development to target species, details of the identified impacts and proposed mitigation have been summarised in Table 7.14 (Appendix 7O of the ES). The assessment and identified mitigation are considered to be appropriate with regards to the impacts identified for each species considered,

Section 7.20 of the ES identifies the production of detailed CEMP, EMMP and Ecological Protection Plan (EPP) and outlines measures which would be implemented to deliver the identified mitigation measures. The outline measures include pre-commencement surveys for breeding birds, bats, otter, badger and reptiles, implementation of a reptile trapping and translocation programme, identification of species translocation protocols, Ecological Clerk of Works supervision, protection of retained habitats. In addition it is identified that an Invasive Non-Native Species Management Plan will be identified to ensure control and prevention of spreading of INNS during and post construction. Having reviewed the findings of the surveys, assessment of likely impacts and proposed mitigation measures Council Ecologists consider that the proposed development would comply with the requirements of relevant local and National Planning Policies with regards to biodiversity, the implementation of the identified mitigation and enhancement measures are fundamental to ensuring the compliance with the relevant Policies and legislation in relation to nature conservation, as identified previously the outline principles identified with regards to the EMMP, CEMP, INNSMP and EPP are considered to be appropriate to enable the application to be determined however **it is essential that submission of detailed versions of these documents are secured through appropriately worded pre-commencement planning conditions including appropriate details of mitigation, monitoring and remediation protocols, the management and monitoring plans will need to be of sufficient duration to ensure establishment of the relevant habitats/features of ecological value. As stated above it is recommended that the EMMP covers a period of 25 years.**

## **Impact on amenity**

### Noise

The proposed development's impact in respect of noise effects associated with the construction of the proposed the northern embankments at Nant Helen has been assessed within Chapter 10: Noise and Vibration of the Environmental Statement.

An assessment of significant environmental effects arising from construction of the proposed embankment identified 5 sensitive receptors for which assessments are made, all of which are to the north of the site. Receptor 1 is at Caehopkin, Receptor 2 is at Brooklands Terrace, Receptor 3 is at the Scout Hall, Receptor 4 is at Cefn Byrle and Receptor 5 is at Llwynhely Cottages.

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

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

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

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

The Council's Environmental Health Officer considers it appropriate to apply the same noise condition to this application (except for the embankment construction). A separate noise condition for the embankment construction is recommended specifying the predicted noise levels for receptors 1-4. The noise limit recommended for Receptor 5 is 52dB (as that is the night-time limit plus 10dB), a limit lower than that is not considered appropriate in this case. It is also recommended that these extended noise limits should apply from 8am each morning rather than 7am due to the close proximity to residential property.

#### Dust and air quality

It is recognised that the principle sources of dust are likely to be associated with the excavation and deposit of soil and overburden and the movement of vehicles within the site

Mineral dust coarser than 10µm may constitute a 'nuisance' due to soiling of surfaces but does not pose a risk to human health. Fine particles of 10µm or less, referred to as PM10 can be inhaled and depending on the concentrations and the nature of the particles, they can be associated with health impacts. The very fine particles of 2.5µm or less are referred to as PM2.5.

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

The construction of the embankment has the potential to give rise to dust and there are sensitive receptors in close proximity. The duration of works to construct the embankment is limited to some 28 weeks but there is potential for adverse impacts from nuisance dust if the activities are not properly controlled. However, provided standard dust management controls are applied the risk of nuisance dust issues is considered to be low. These standard dust management controls can be included in the CEMP.

Air Quality Regulations prescribe National Air Quality Strategy (NAQS) – objectives to be achieved for a range of pollutants and pollutants such as PM10 particulates are relevant to human health effects.

Predicted PM10 data from DEFRA shows that the 2020 average PM10 concentrations in the Caehopkin area are 12.43 µg/m<sup>3</sup>, 31.1% of the annual average mean NAQS objective for PM10 of 40µg/m<sup>3</sup>. The NAQS daily mean objective for PM10 is 50µg/m<sup>3</sup> which should not be exceeded more than 35 times per year. It is important to note that the NAQS threshold values have been set at a level at which the risk of adverse health effects to any individual would be very small and the objectives represent a threshold above which government considers the health risks associated with air pollution are unacceptable.

Given that the surface mine already contributes to the current air quality situation, it is considered that there is a very low risk that air quality objectives will be exceeded by the proposed activities provided that good practice measures are followed. However a Dust Management Plan is recommended by the Councils Environmental Health Officer.

### **Public Access and Common Land**

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

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

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

National Planning policy requires that green infrastructure is treated as being important in facilitating opportunities for people to improve their health and wellbeing.

It also considers that planning system should protect and enhance green infrastructure assets and networks on this basis.

The PRoW and common land are predominantly located within Powys but extend into Neath Port Talbot, albeit beyond the limits of the site. Notwithstanding that, the contiguity of features and uninterrupted cross boundary usage by the public will be important to preserve.

Powys Local Development Plan Policy DM13 stipulates that the PRoW network should be enhanced and integrated into development proposals or appropriate mitigation measures should be put in place where necessary.

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

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

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

Some of the PRoW will not be reinstated along their historical alignment and modest diversions will be required to facilitate the earthworks. It is not considered that these diversions will undermine the holistic function of the PRoW network or impinge on public rights of access, whether within or across the site, or where PRoW may form contiguous links beyond. A statutory process for the diversion of the definitive routes will however have to be followed. Notwithstanding statutory processes required, it is not considered there is any conflict with Policy DM13(9) of the Local Development Plan.

### **Highways and Transportation**

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

Powys Highways and Transportation made comment that the application does not consider or quantify the level of plant and operatives that will be required to undertake the proposed works and it does not clarify where such movements will occur. They also comment that a cutting appears to sever the existing access road.

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

### **Cumulative Effects**

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

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

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

In respect of the potential 'Global Centre of Rail Excellence', as identified earlier in this report, the GCRE is a Welsh Government proposed Scheme which would use the Nant Helen Complementary Restoration Earthworks as the basis for the development of a rail testing facility. Should the GCRE project be moved forward, there would likely be environmental effects that would need to be considered cumulatively with those of Nant Helen.

### **Socio-economic**

This section of the Report considers the potential socio-economic benefits of this proposal. To be clear, the proposal is for a flexible and adaptable landform which integrates with the approved restoration scheme for the surface mine. The current after uses would be agriculture and nature conservation.

However, the landform is intended to be flexible and adaptable in order to enable some form of future development and that aspiration needs to be afforded some weight. The potential after uses are noted in the description of development and must therefore be considered when looking long-term and in considering the possible socio-economic benefits. It must be stressed that this proposal does not consider the acceptability or otherwise of a specific GCRE development or any future leisure uses and in no way seeks to prejudge any planning application that may be made for such a facility in the future.

The applicant states that the UK does not possess anything approaching such a high-quality facility as that planned under the GCRE proposal. It has the potential to not only to solve some fundamental industry issues, but to deliver wide-reaching benefits.

This facility has the potential to 'map into' (sic) key industry trends in the areas of traction (fuel cell and hydrogen technology); control systems and automation; digitisation (transfer/communication/automated inspection and maintenance) and design (new and lightweight materials). Other potential uses include rolling stock/vehicle certification, highways and Automated Vehicle use and emergency response training.

Government's recent Rail Sector Deal has identified the potential of the UK rail industry for driving innovation, employment and exports. Government is also aware of the urgent need to improve efficiency, performance and capacity across the UK's railways. The test facilities and associated R&D activities at the proposed GCRE would be instrumental in both establishing UK industry at the leading edge of modern railway technology and enhancing performance, increasing efficiency and removing risk from the introduction of new trains and digital management and control technologies. With projects such as HS2, CrossRail2, Northern Powerhouse Rail and the Cardiff Valleys transformation approaching, the need for safe and efficient testing to drive performance has never been greater.

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

Potentially, GCRE would not only bring high-quality employment to a deprived area, but also help to reduce the productivity gap which exists between the region and the rest of the UK. In 2016, the GVA per head in Powys and Neath Port Talbot was around £17k, compared to the UK average of £27k. In addition, the facility would boost the importance of South Wales in the national railway industry and create opportunities for local colleges and universities to become more active in railway research and training. For example, Coleg y Cymoedd, with its Centre of Excellence for Railway Training, could benefit greatly from GCRE by giving its students second-to-none practical experience.

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

GCRE would be a unique facility not just in the UK, but in Europe. With European railway organisations accelerating their R&D investments through programmes such



as the EU-supported Shift2Rail, the need for testing facilities is increasing, especially for infrastructure, which is currently not available anywhere on the continent. By building GCRE now, the facility could position itself as a leader in the field of railway infrastructure testing, attracting investment from all over Europe and beyond.

Within the context of R&D investments, there is one theme which stands out from the rest: the decarbonisation of transport. The UK Government is adamant to achieve a net-zero economy by 2050 and sees transport as a key industry to reach this goal, as showcased by the recently published Decarbonising Transport strategy (DfT, March 2020). To deliver on this objective, the strategy identifies the importance of taking up new technologies and the requirement for investment in both rail infrastructure and rolling stock. GCRE would provide a testbed for new, green railway technologies, hence helping the UK to becoming net-zero by 2050. This also demonstrates that GCRE is in line with the Well-being for Future Generations Act.

If the GCRE development does not happen for whatever reason there are potential alternative uses i.e. Tourism/Leisure End Use Benefits. The application site sits close to several large settlements within Powys and Neath Port Talbot and adjacent to the national park and enjoys excellent road access from several entry points into the locality from the strategic road network. There is a clear opportunity to take advantage of those locational benefits to establish a visitor destination that can help to both complement existing resources, help extend the season, whilst also relieve pressure on more traditional/'honey pot' locations within the national park itself.

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

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

## **Consultation**

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

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

- 182 community consultees, including 142 local ward members and chief officers of both Powys County Council and Neath Port Talbot County Borough Council and 40 community councillors at Onllwyn Community Council,

Ystradynlais Town Council, Tawe Uchaf Community Council and Severn Sisters Community Council;

- Eight local stakeholders including two MPs, two AMs and other local stakeholder groups;
- Two landowners;
- 902 residents;
- 25 businesses neighbouring the site; and
- All relevant Statutory Consultees.

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

In addition, the Authority has undertaken the necessary publicity by the posting of site notices in the same locations as the notices for the PAC Consultation and by advertisement in the Local Press. The consultants have also met with the Tawe Uchaf Community Council.

Therefore, despite the formal consultation having to be undertaken during the Covid-19 pandemic it is clear that the appropriate publicity has been undertaken and local people are aware of the proposal and it would not be fair to say that the community has not been engaged and consulted in relation to these proposals.

## **Conclusion**

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

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

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

Key factors in the assessment process include:

- Social Considerations, including: - who are the interested and affected people and communities; who will benefit and suffer any impacts from the proposal; what are the short and long-term consequences of the proposal on a community;
- Economic Considerations including: - the numbers and types of long-term jobs expected to be created or retained; whether, and how far, the development will help redress economic disadvantage or support regeneration priorities, for example by enhancing local employment opportunities
- Cultural Considerations including: - how far the proposal supports the conditions that allow for the use of the Welsh language; whether or not the development protects areas and assets of cultural and historic significance; have cultural considerations and their relationships with the tourism industry been appropriately maximised;
- Environmental Considerations including: - will important features of the natural and built environment be protected and enhanced; are the environmental impacts of development on health and amenity limited to acceptable levels and the resilience of ecosystems improved;

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

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

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

It should be noted that concerns have been expressed about the stability of the proposed northern embankment and surface water drainage potentially affecting Caehopkin. These concerns have been investigated and the assessments earlier in this report indicate that this matter can be adequately addressed and subject to a condition requiring the detailed design there would be no negative impacts. In fact, there are potential benefits in attenuating surface water flows and mitigating current flooding problems in Caehopkin.

The Council Ecologists have concluded the proposed development would not result in the loss of biodiversity in the long term subject to implementation of the proposed mitigation and enhancement measures which can be required by condition.

Amenity impacts from noise and dust are temporary during construction and can be adequately controlled via planning conditions in order to avoid significant negative impacts.

The Countryside Officer has stated that some of the PRoW will not be reinstated along their historical alignment and modest diversions will be required to facilitate the earthworks. However, it is not considered that these diversions will undermine the holistic function of the PRoW network or impinge on public rights of access, whether within or across the site, or where PRoW may form contiguous links beyond. A statutory process for the diversion of the definitive routes will however have to be followed in relation to PRoWs and in relation to temporary disturbance via engineering works on Common Land.

As described earlier in this report, the proposed development will have adverse local impacts, notably in respect of:

1. major adverse visual impact for at least 15 years when viewed from the north, and the Brecon Beacons National Park in particular. This will potentially have adverse impacts on one of the National Park's statutory purposes namely, "to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park". The NPA also have significant concern that the proposal will adversely impact on two of the Special Qualities of the Park — its "sweeping grandeur and outstanding natural beauty" and the "working, living "patchwork" of contrasting patterns, colours, and textures".

Consideration of the application must therefore include an assessment of:

- The need for the development, in terms of national considerations and the impact of permitting it or refusing it upon the local economy. There are considered to be benefits in providing a flexible and adaptable landform as a legacy of opencast mining developments. This in itself, located close to the settlement of Ystradgynlais and other nearby communities, has the potential to provide long-term benefits in terms of recreation/leisure and the contribution those opportunities make to well-being. There are other potential uses that the landform could facilitate such as GCRE and other tourism benefits. These must be afforded some weight in the consideration of the application. Refusing the application would undermine any future development aspirations for this site and the regeneration of an already deprived area.
- The cost of and scope for providing the development outside the designated area or meeting the need for it in some other way. An opportunity has arisen to provide a development which would potentially enable future development of national importance. At the same time as the Government is seeking a site for a Global Centre of Rail Excellence, the Nant Helen Surface Mine is coming to an end. The Nant Helen site happens to have an existing rail link which is essential; earthworks can be aligned with site restoration thereby reducing costs the land area is of sufficient scale to facilitate future development of a potential GCRE or future leisure uses, and the site is in the ownership of a single owner

which simplifies any land deals necessary. This opportunity is unlikely to occur elsewhere in the Country. The only other site under consideration for a GCRE facility is understood to be in the north of England.

- Any detrimental effect on the environment and the landscape, and the extent to which that could be moderated and/or mitigated. The ES has identified major adverse visual impacts at year one and while the magnitude and severity of such impacts will soften over time through strategic landscaping, and could subsequently be mitigated by year 15, it has to be accepted that the development will introduce large-scale and permanent visual change.
2. Major adverse impact on the Tramroad SM. Again consideration needs to be given to the extent to which the impacts can be mitigated/controlled and secondly, whether there are exceptional circumstances that apply in this case.

The ES states that the loss of a section of the earthwork under the new embankment would lead to a loss of legibility as well as the removal of part of its physical fabric. Given the archaeological and historical values of this monument, this would constitute a permanent major adverse significance of effect. This is discussed in detail above.

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

For the purpose of this assessment, it is considered that the extent of works and agricultural/nature conservation after use proposed by the current application would not constitute the necessary exceptional circumstances to outweigh the harm to the heritage asset, and thus development (in the scheduled area) would be contrary to PPW and TAN24.

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

In this respect, in the absence of such exceptional justification (which can only be considered under a later application), or SMC being issued, it is concluded

that works should not be allowed within the scheduled area of the SM at this juncture.

This, however, is considered to be easy to address through the imposition of a *Grampian* condition that will prevent any works that will impact upon the scheduled area until such time as SMC has been granted.

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

The revised restoration proposal looks to provide a flexible and adaptable landform that can be used or adapted for a diverse set of future uses. This could range from the traditional agriculture, woodland and nature conservation uses, to amenity, leisure and tourism uses (including the potential for future tourist accommodation to add to the existing offering within the BBNP) that would be designed to help take visitor pressure off the BBNP.

Other uses of the site could also include industrial after uses such as the Welsh Government to develop a rail testing and storage facility, known as the Global Centre of Rail Excellence (GCRE) at this site together with the adjacent Onllwyn Washery. It is anticipated that a planning application for the GCRE will be submitted later this year subject to confirmation of its feasibility.

The justification for designing the proposed earthworks in the way they have been designed is that the landform would not only make an ideal bridleway / footpath for walking, cycling and horse riding, but should planning permission be awarded for the GCRE, then the required profile for this would already have been created, thereby avoiding the need for further extensive earthmoving should GCRE gain planning permission. As set out in the socio-economic section above, the potential economic benefits of the GCRE proposal are significant and if the GCRE does not materialise the proposed landform provides other opportunities for the regeneration of this area.

TAN23 states that Local planning authorities should recognise market signals and have regard to the need to guide economic development to the most appropriate locations, rather than prevent or discourage such development.

As part of this generally positive and permissive National Policy context, Technical Advice Note 23 (Economic Development) emphasises (2.1.2) that where economic development would cause environmental or social harm which cannot be fully mitigated, careful consideration of the economic benefits will be necessary.

It further notes that, “there will of course be occasions when social and environmental considerations will outweigh economic benefit”, but then emphasises the need to answer the following three questions in order to help clarify and balance the economic, social and environmental issues.

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

less harm, and if so where? In this case, no viable alternative sites have been identified in Wales. A possible alternative site exists only in the North of England.

2. Jobs accommodated: how many direct jobs will be based at the site? It is difficult to quantify at this stage how many direct jobs would be created as this is an enabling development which seeks to de-risk future development aspirations. What can be said with some confidence is that the potential to create direct jobs would be significantly greater if this development is approved.
3. Special merit: would the development make any special contribution to policy objectives? TAN23 states that industrial development in a disadvantaged area could help fight social exclusion, improve run-down places and create job opportunities for people at high risk of unemployment. In addition, PPW advises that the planning system should particularly support the low-carbon economy, innovative business / technology clusters. Developments that will provide space for these categories of businesses count as making special policy contributions. This development is seen as an enabler to a potential GCRE project which would support low carbon transport initiatives.

Therefore, in balancing the key planning issues, considerable weight has to be given to the role of the proposed earthworks in providing a comprehensive, flexible and adaptable landform across the entire site. This landform could support a wide range of future uses including agriculture, woodland and nature conservation; and/or amenity, leisure, tourism and employment in this area. Significant weight has to be given to the importance of the SM but damage to it can be prevented by a Grampian condition and the requirement for Scheduled Monument Consent to be obtained. Significant weight also needs to be afforded to the visual impact from BBNP, but the impact is temporary and will be mitigated over time.

In this regard and having particular regard to the advice in PPW and TAN23, it is concluded that the proposed development is acceptable in principle and complies with national planning policies and local development plan policies. It is considered that the adverse environmental impacts that would arise from the proposed development can be satisfactorily addressed via planning conditions. Overall, the proposal to create a flexible and adaptable landform in this location close to Ystradgynlais and other nearby settlements, on a site previously worked for coal extraction, is considered to meet with sustainable place-making objectives and it has the potential to create significant social, economic, cultural and environmental benefits.

In reaching this conclusion the likely significant effects of the development on the environment have been considered.

### **Recommendation**

It is recommended that the application be approved subject to the following conditions.

### **CONDITIONS**

1. The development shall begin not later than five years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following documents and plans or as otherwise modified by any revisions or by other conditions, schemes or approvals by the Local Planning Authority:
  - Planning Application Validated on 15<sup>th</sup> May 2020.
  - Planning Statement – April 2020
  - Environmental Statement (including Figures and Appendices) – May 2020.
  - Drainage Strategy – April 2020
  - Proposed Finished Levels - Plans 1, 2, 3 and 4
  - Proposed Track Embankment and Cutting Cross Section (Drawing No CG1024)
  - Cae-Hopkin and Brooklands Terrace Embankments, Cefn Byrle Cutting: Plan and Sections (Drawing No CG1063)
3. Before beginning any development at the site, you must do the following: -
  - a) Notify the Local Planning Authority in writing that you intend to commence development by submitting a Formal Notice under Article 24B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) in the form set out in Schedule 5A (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect); and
  - b) Display a Site Notice (as required by Section 71ZB of the 1990 Act) in the form set out in Schedule 5B (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect), such Notice to be firmly affixed and displayed in a prominent place, be legible and easily visible, and be printed on durable material. Such Notice must thereafter be displayed at all times when development is being carried out.
4. Prior to the commencement of construction of the Northern Embankment, a Geotechnical Engineering Design Specification for the Embankment Construction, including ground preparation works, and a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The specification and method statement shall be implemented as approved.
5. Prior to the commencement of development a Dust Management Action Plan shall be submitted to and approved by the Local Planning Authority. The



approved plan shall be implemented at all times for the duration of site preparation and construction works at the site.

6. Prior to the commencement of development a Noise Monitoring and Management Action Plan shall be submitted to and approved by the Local planning Authority. The approved plan shall be implemented at all times for the duration of site preparation and construction works at the site.
7. Prior to the commencement of construction of the northern embankment the proposed 5m screen fence shall be constructed in position as identified in Figure 10.1: Noise Sensitive Receptors for Northern Embankment). Details of the construction and design of the fence (providing a minimum of 5dB attenuation of noise) shall be submitted to and approved by the Local Planning Authority prior to its construction and it shall be constructed and maintained in accordance with the approved details for the duration of works for the construction of the northern embankment.
8. No development shall commence or be undertaken within the area identified in green on plan NPT1/PCC1 until such time as the Welsh Ministers have formally issued Scheduled Monument Consent for all works within that area affecting the Scheduled Monument known as the Tramroad at Ystradgynlais (CH001).

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

9. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved in writing by the Local Planning Authority. The archaeological programme of work will be undertaken and completed in accordance with the relevant Standards and Guidance laid down by the Chartered Institute for Archaeologists. A copy of the resulting report should be submitted to the Local Planning Authority. After approval by the Local Planning Authority, a copy of the report and resulting archive should also be sent to the Historic Environment Record Officer, Clwyd Powys Archaeological Trust for inclusion in the regional Historic Environment Record and the National Monuments Record, RCAHMW.

10. No development shall take place (including demolition, ground works, vegetation clearance) until a detailed Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP must include (but not be limited to) the following:

- Risk assessment of potentially damaging construction activities.
- Construction Methods: details of materials, how waste generated will be managed.
- General Site Management: details of the construction programme including timetable, details of site clearance, details of site construction drainage, containment areas, implementation of appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse and surface water drain.
- Resources Management: details of fuel and chemical storage and containment, details of waste generation and its management, details of water consumption, wastewater, and energy use.
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- Pollution Prevention Plan: demonstrating how relevant Guidelines for pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- Invasive Non-Native Species Management Plan.
- Details of task and security lighting to avoid disturbance of habitats of importance to crepuscular or nocturnal species.
- Responsible persons and lines of communication and emergency contact details.
- Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the site preparation and construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

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

- Risk assessment of potentially damaging construction activities.
- Details of Pre-commencement Surveys, including methodologies and timing.
- Identification of “biodiversity protection zones”.
- Reptile trapping and relocation method statement including details of receptor sites.
- Vascular Plant Species translocation method statements (specifically common wintergreen, lesser bulrush, floating bur-reed, greater tussock sedge and spiked water milfoil, royal fern and viviparous fescue).
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts to retained features of ecological importance during construction (may be provided as a set of method statements).
- The location and timing of sensitive works to avoid harm to ecological features of importance.
- The times during construction when specialist ecologists need to be present on site to oversee works.
- Responsible persons and lines of communication.
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- Use of protective fences, exclusion barriers and warning signs.

The approved EPP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

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

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

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

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

fencing and warning signs will be maintained during the construction period in accordance with the approved details.

14. Prior to the commencement of development a Materials Handling Strategy shall be submitted to and be approved by the Local Planning Authority. The Strategy shall make provision for the stripping, conservation, management, storage and re-spreading of all topsoil and subsoil resources.
15. No development shall commence until a preliminary investigation and assessment of the nature and extent of contamination affecting the application site area has been submitted to and approved in writing by the local planning authority. This investigation and assessment must be carried out by or under the direction of a suitably qualified competent person, in accordance with extant guidance and best practice, and shall assess any contamination on the site, whether or not it originates on the site.

The report of the findings shall include:

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

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

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

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

The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.

17. If the presence of contamination is confirmed in the report required by Condition 16 above, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 16 has been received from the local planning authority.

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

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

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

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

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

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

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

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

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

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

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

23. Notwithstanding condition 22 above, works related to the construction of the northern embankment, including all ground works involving excavations, shall be

limited to the following times, between 07.00 to 18.00 hours Mondays to Fridays (excluding Bank/Public Holidays) and 08.00 to 13.00 hours on Saturdays.

24. Noise arising from operations at the site as measured at any noise sensitive location shall not exceed background (LA90) plus 10dB LAeq,1hr or 55dB LAeq,1hr (free field), whichever is the lesser, during normal working hours (0700 to 1900 hours Monday to Friday excluding Bank/Public Holidays and 08.00 and 12.00 hours on Saturdays). At all other times the noise arising from operations at the site shall not exceed 42dB LAeq, 1hr (free field) at any noise sensitive location.
25. Notwithstanding the noise level limits set out in Condition 24, the level of noise from operations consisting of the construction of the northern embankment, shall not exceed the following levels, measured as dB LAeq,1hr (free field), at the noise sensitive locations specified below (as identified on Figure 10.1: Noise Sensitive Receptors for Northern Embankment). These levels shall apply only between 08.00 to 18.00 hours Mondays to Fridays (excluding Bank/Public Holidays) and 08.00 to 12.00 hours on Saturdays

Receptor 1 - 61

Receptor 2 - 57

Receptor 3 – 60

Receptor 4 – 54

### **Reasons**

1. Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 (as amended).
2. Required to be imposed pursuant to Section 71ZA of the Town and Country Planning Act 1990 (as amended).
3. To comply with procedural requirements in accordance with Article 24B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) and Section 71ZB of the Town and Country Planning Act 1990.
4. To ensure that the embankment is stable and does not cause a danger to residents living in the vicinity in compliance with Policy DM10 of the LDP
5. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.
6. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.



7. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.
8. Since the works proposed within the scheduled area of the tramroad at Ystradgynlais and within its immediate setting do not currently amount to the exceptional circumstances necessary to justify such development under PPW and TAN24, and will therefore only be acceptable on the formal issuing of Scheduled Monument Consent by Welsh Ministers, such consent process considering at that time all matters material to their assessment.
9. To protect the historic environment and to comply with Policies S7 and M4 of the LDP in relation to the historic environment.
10. To comply with Powys County Council's LDP Policy DM2 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
11. To comply with Powys County Council's LDP Policy DM2 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
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13. To comply with Powys County Council's LDP Policy DM2 in relation to the Natural Environment and meet the requirements of Planning Policy Wales (Edition 10, December 2018), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
14. To ensure adequate management, conservation and utilization of soil resources for the restoration of the site and to comply with Policy DM13 of the LDP.
15. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.
16. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development

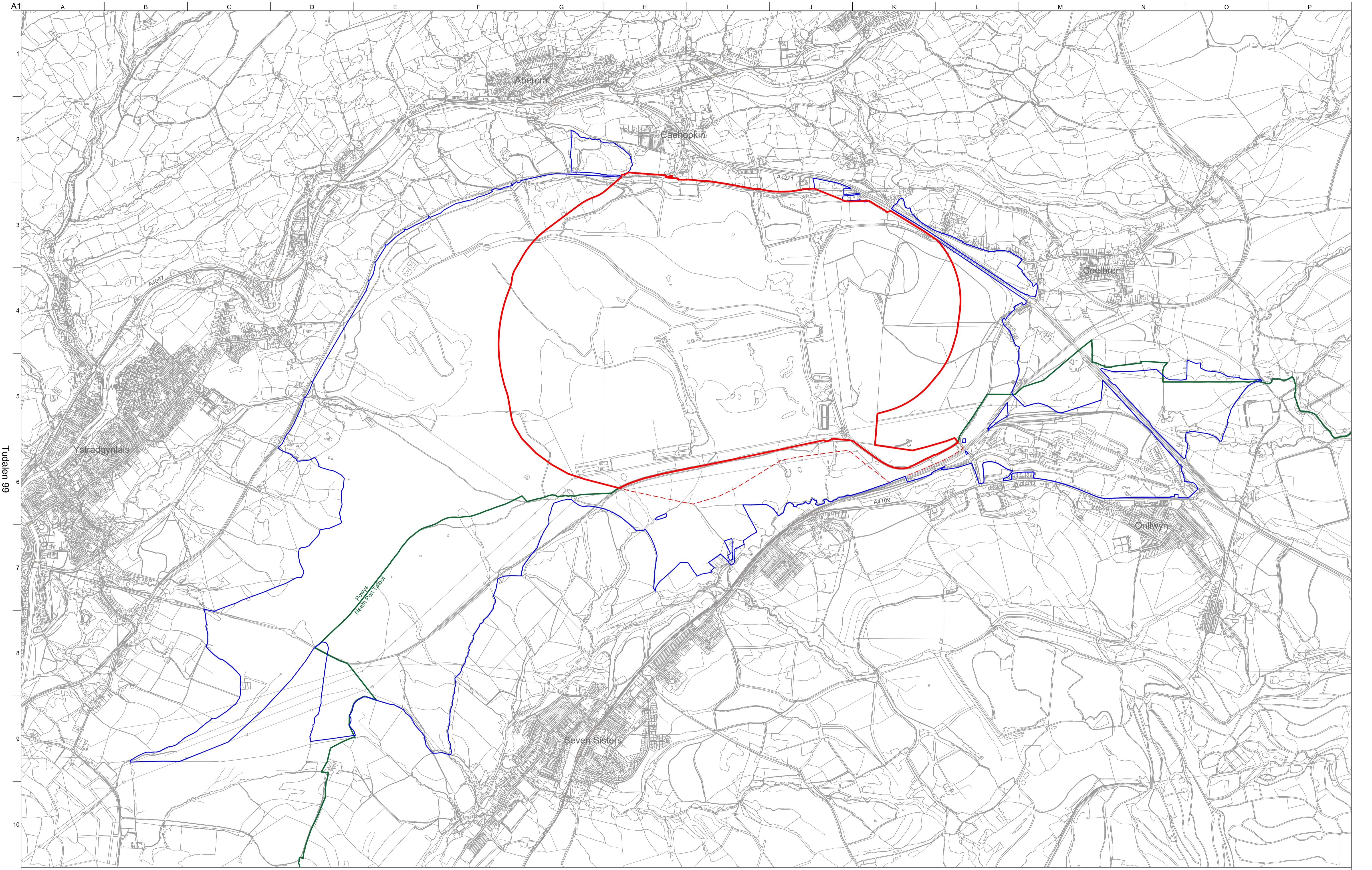
can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.

17. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.
18. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.
19. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.
20. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy DM10 of the Local Development Plan.
21. To ensure that the impact on the landscape is minimised in compliance with Policy DM4 of the LDP
22. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.
23. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.
24. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.
25. To protect the living conditions of nearby residents in compliance with Policy DM13 of the LDP.

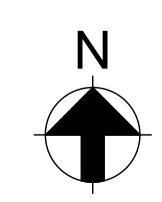
## Notes

1. In the conditions, the term 'emergency' means any circumstance in which the site operator has a reasonable cause for apprehending injury to persons or serious damage to property.
2. As of 7th January 2019, this proposed development may be subject to Schedule 3 of the Flood and Water Management Act 2010 and therefore approval of Sustainable Drainage Systems (SuDS) features will be required in accordance with the 'Statutory standards for sustainable drainage systems – designing, constructing, operating and maintaining surface water drainage systems'. It would therefore be recommended that the developer engage in consultation with the relevant local authorities, as the determining SuDS Approval Bodies (SABs), in relation to their proposals for SuDS features. Please note, Dwr Cymru Welsh Water is a statutory consultee to the SAB application process and will provide comments to any SuDS proposals by response to SAB consultation.
3. The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.
4. The earthworks will impact on the definitive routes of public rights of way. legal diversions will be required to allow for the earthworks to be constructed. The proposed earthwork must not be constructed over the existing lines of the paths, until such time as the legal diversion process is complete as it is an offence to develop over the line of a public right of way.
5. Under section 38 of the Commons Act 2006, it is unlawful for 'restricted works' to take place on common land without prior consent. Construction of the earthworks and associated drainage is likely to constitute restricted works: a separate legal process will need to be undertaken to seek common land consent for these works.

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol



Tudalen 99



- Key**
- Site Boundary (Powys)
  - Site Boundary (Neath Port Talbot)
  - Land in applicant's ownership
  - Local Authority Boundary

Issue	Date	By	Chkd	Appd

ARUP

4 Pierhead St, Capital Waterside  
Cardiff, CF10 4QP  
T +44(0)29 20473727 F +44(0)29 20472277  
www.arup.com

Client  
Celtic Energy Ltd

Job Title  
Nant Helen Complimentary  
Restoration Earthworks

Drawing Title  
Site Location Plan  
(Powys)

Scale at A1 1:10,000  
Discipline Planning  
Job No 264904-00 Drawing Status Planning  
Drawing No PL01 Issue 01

Mae'r dudalen hon wedi'i gadael yn wag yn fwrddol



## Delegated List

55 Applications

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Parish Name	Decision	Date Application	Application No.	Application Type	Date Decision	Proposal	Location
Aberhafesp Community	Approve	01/04/2020	20/0514/FUL	Full Application	30/06/2020	Erection of a General Purpose Agricultural Building	Agricultural Building At Land At Bwlch Y Ffridd Bwlch-y-ffridd Newtown Powys
Bausley With Crigfon Community	Approve	01/11/2019	19/1628/RES	Reserved Matters	03/07/2020	Application for reserved matters following approval of P/2017/0299 (outline) for the erection of 9 no. dwellings and associated works	Land Adjacent To Belin Mount Coedway Crew Green Powys
Berriew Community	Consent	24/02/2020	20/0322/REM	Removal or Variation of Condition	06/07/2020	Removal of Condition 4 of original consent (M15442) relating to occupancy.	Bwthyn Y Llan Berriew Welshpool SY21 8BH

CODE: IDOX.PL.REP.05

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## Delegated List

### 55 Applications

Bettws  
Community

Approve	27/11/2019	19/1935/FUL	Full Application	10/07/2020	Alterations / renovations to dwelling to include replacement windows and doors; Erection of replacement garage, utility room and garage (demolish existing), erection of porch, lower courtyard levels and associated works	Highgate Bettws Newtown SY16 3LF
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Tudalen 102

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20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)





## Delegated List

### 55 Applications

Approve	27/11/2019	19/1936/LBC	Listed Building Consent	10/07/2020	Listed building consent for internal and external alterations to dwelling including replacement of some windows and doors, erection of replacement utility room, garage and outbuilding (demolition of existing garage , utility and outbuilding), erection of porch, lower court yard levels and associated works	Highgate Bettws Newtown SY16 3LF
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Tudalen 103

Bronllys Community	Consent	25/02/2020	20/0142/FUL	Full Application	25/06/2020	Construction of a barn for use as implement shed and feed store	Land At Llswen Boughrood Brecon Powys LD3 0YB
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[← Go Back](#)



## Delegated List

### 55 Applications

Cadfarch Community	Approve	29/05/2020	20/0847/ELE	Electricity Overhead Line	24/06/2020	Section 37 application under Electricity Act 1989 Overhead Lines (exemption) Regulators 2009 for installation of a new pole to support an existing overhead line	Rhiwlas Farm Derwnlas Machnilleth SY20 8TN
Clyro Community Budalen 104	Consent	16/03/2020	20/0457/REM	Removal or Variation of Condition	25/06/2020	Section 73 application to vary condition 3 attached to planning approval P/2010/1061 to allow the unit to be used as ancillary accommodation in conjunction with the existing dwelling house along with its current holiday let use	Holiday Let At Fforest Cwm Clyro Hereford Powys HR3 5SG
Erwood Community	Approve	04/05/2020	20/0670/HH	Householder	01/07/2020	Erection of single storey shed for storage of garden equipment (part retrospective)	Pwll Y Faedda Erwood Bridge Builth Wells LD2 3YS
Forden With Leighton & Trelystan Com	Refused	30/04/2019	19/0465/NMA	Non-Material Amendment	26/06/2020	Application for non-material amendment to planning permission M/2004/0346 in respect of approved plans	Nantcribba Barns Forden Welshpool SY21 8NW
Knighton Community	Approve	01/07/2020	20/1052/NMA	Non-Material Amendment	08/07/2020	Application for a non material amendment to planning permission 19/1222/FUL in relation to the positioning of the bungalow	The Meadows Hatfield Meadows Knighton Powys LD7 1RY

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

Llandinam Community	Approve	17/01/2020	20/0019/FUL	Full Application	29/06/2020	Conversion of restaurant (A3), hotel and part of pub to form 2 residential flats (C3)	The Lion Hotel Llandinam Powys SY17 5NY
Llandrindod Wells Community	Approve	08/01/2020	20/0012/FUL	Full Application	06/07/2020	Erection of an extension, alterations to site to provide additional parking, skip waste storage area and RTC compound	Fire Station Parc Noyadd Park Llandrindod Wells Powys LD1 5DF
Llandrinio And Arddleen Community	Consent	27/04/2020	20/0635/FUL	Full Application	14/07/2020	Erection of an agricultural building	Keeper Cottage (Formerly Park Hall) Tredarwen Lane Arddleen Llanymynech Powys SY22 6RZ
Llandysilio Community	Approve	07/04/2020	20/0383/VAR	Discharge/Modification of S106	09/07/2020	Variation of S106 agreement attached to permission M/2007/0872 in relation to occupancy	12 Hafod Cottages Parc Hafod Four Crosses Llanymynech Powys SY22 6NX
	Consent	03/06/2020	20/0840/FUL	Full Application	09/07/2020	Erection of agricultural storage building	The Meadows Courthouse Bank Trewylan Lane Llansantffraid-Ym-Mechain SY22 6TE

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

Llanfair Caereinion Community	Consent	04/06/2020	20/0823/FUL	Full Application	10/07/2020	Conversion of redundant barn to form holiday accommodation, installation of sewage treatment plant and all associated works	Barn At Glyn Dwr Llanfair Caereinion Welshpool SY21 0DW
Tudalen 106	Consent Section 106	14/01/2020	20/0010/OUT	Outline planning	01/07/2020	Erection of 3 dwellings and garages, creation of 3 vehicular accesses, installation of sewage treatment plant and all associated works (some matters reserved)	Tanyfron Broncafnet Lane Llanfair Caereinion Welshpool SY21 0BW
Llangurig Community	Approve	30/03/2020	20/0517/LBC	Listed Building Consent	06/07/2020	Rebuilding and relocation of existing lychgate	St Curig's Church Llangurig Llanidloes Powys
	Approve	07/04/2020	20/0516/FUL	Full Application	06/07/2020	Rebuilding and relocation of existing lychgate	St Curig's Church Llangurig Llanidloes Powys
Llangyniew Community	Refused	04/10/2019	19/1447/FUL	Full Application	09/07/2020	Erection of a steel frame extension to existing steel frame building	Delta Services Workshop Llangyniew Welshpool SY21 0JY

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

Llanidloes Community	Consent	19/05/2020	20/0651/FUL	Full Application	09/07/2020	Conversion of single dwelling (formerly the Lloyds Hotel) to 4 self-contained flats	Lloyds Hotel 6 Cambrian Place Llanidloes SY18 6BX
Llanrhaeadr-Ym-Mochant Community	Consent	06/05/2020	20/0667/REM	Removal or Variation of Condition	26/06/2020	Section 73 application to vary conditions 1 & 2 of planning approval P/2015/1252 to alter the design and to extend time limit for commencement & to remove conditions 6, 7 and 14 relating to solar panels, photographic survey and recycled materials	Cae Mawr Llanrhaeadr-ym-mochnant Oswestry Powys SY10 0DW
Llanwddyn Community	Approve	09/03/2020	20/0319/FUL	Full Application	29/06/2020	Erection of a forestry and operation building and all associated works	Land At Raven's Wood Llanwddyn Oswestry Powys SY10 0JX
Llanwrtyd Wells Community	Approve	27/05/2020	20/0602/HH	Householder	09/07/2020	Construction of a wraparound single storey extension incorporating a garage and adjustments to porch	Fronheulog Ffos Road Llanwrtyd Wells LD5 4RG
Newtown And Llanllwchaiarn Community	Approve	07/02/2020	20/0228/FUL	Full Application	29/06/2020	Change of use of building from B1 to A1 grocery store (retrospective)	Store Rear Of Ivycroft Lower Canal Road Newtown Powys SY16 2HY

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

Tudalen 108	Approve	20/02/2020	20/0340/FUL	Full Application	29/06/2020	Application for the erection of a dwelling regarding Plot 5 of planning permission P/2015/0197	Plot 5 Maes Yr Eglwys Newtown Powys
	Approve	14/04/2020	20/0576/FUL	Full Application	29/06/2020	Proposed warming room extension	Dyffryn Industrial Estate, Unit 5 Pool Road Newtown SY16 3BD
	Approve	05/06/2020	20/0851/ADV	Advertisement Consent	08/07/2020	Installation of non-illuminating fascia advertisements, hanging and window signs (18 in total) Retrospective	1 Bear Lanes Shopping Centre Broad Street Newtown SY16 2QZ
	Approve	17/06/2020	20/0924/NMA	Non-Material Amendment	07/07/2020	Application for non material amendment to planning permission 19/0095/RES in relation to floor plans, and elevations which include the repositioning of the chimney, gable design and repositioning of balcony	4 Church House Orchard Llanllwchaiarn Newtown SY16 3BH

[CODE: IDOX.PL.REP.05](#)

[20/07/2020 10:18:27 POWYSCC\sandraf](#)

[← Go Back](#)



## Delegated List

### 55 Applications

Old Radnor Community	Consent	16/09/2019	19/1493/FUL	Full Application	26/06/2020	Installation of 5 Safari tents for holiday use, formation of pedestrian & vehicular access including parking area, installation of sewage treatment plant and associated works	Land At Pentre Farm Old Radnor Presteigne Powys LD8 2RP
Paincastle Community	Approve	14/02/2020	20/0145/FUL	Full Application	14/07/2020	Erection of an agricultural building, together with the creation of hardstanding and access track	Land Adjacent To The Old School Rhosgoch Builth Wells Powys LD2 3JY
Presteigne Community	Consent	16/03/2020	20/0458/FUL	Full Application	25/06/2020	Erection of artist's studio	9 Harper's Lane Presteigne LD8 2AN
	Consent	17/04/2020	20/0537/FUL	Full Application	26/06/2020	Installation of a biomass boiler (retrospective)	Unit 2 Home Farm Presteigne Powys LD8 2EF
	Consent	17/04/2020	20/0538/FUL	Full Application	26/06/2020	Installation of biomass boiler (retrospective)	Unit 1 Home Farm Presteigne Powys LD8 2EF
Rhayader Community	Approve	19/05/2020	20/0745/HH	Householder	01/07/2020	Proposed Extension and associated works	20 Green Gardens Rhayader LD6 5EH

[CODE: IDOX.PL.REP.05](#)

[20/07/2020 10:18:27 POWYSCC\sandraf](#)

[← Go Back](#)



## Delegated List

### 55 Applications

	Approve	19/05/2020	20/0760/HH	Householder	10/07/2020	Erection of an extension between the existing house and detached garage	Oaklands Dark Lane Rhayader Powys LD6 5DA
	Consent	22/05/2020	20/0787/FUL	Full Application	09/07/2020	Removal of existing roof coverings and felt and replace with a suitable alternative as close to existing as possible.	The Community Centre North Street Rhayader LD6 5BU
St. Harmon Community	Approve	28/09/2018	18/0463/FUL	Full Application	30/06/2020	Full: Erection of a broiler unit, creation of access and all associated works	Llwyngwilym Farm Rhayader Powys LD6 5NS
Trefeglwys Community	Approve	05/05/2020	20/0681/FUL	Full Application	03/07/2020	Erection of a covered silage clamp together with all other associated works	Upper Ffrydd Trefeglwys Caersws SY17 5QS
	Approve	05/05/2020	20/0683/FUL	Full Application	03/07/2020	Erection of a general purpose agricultural building to be used as a manure store together with all other associated works.	Upper Ffrydd Trefeglwys Caersws SY17 5QS
	Approve	07/05/2020	20/0699/HH	Householder	03/07/2020	Demolition of storage shed. Erection of enlarged storage shed	1 Glantrannon Trefeglwys Powys SY17 5PL

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)





## Delegated List

### 55 Applications

Tudalen 11	Approve	13/05/2020	20/0712/HH	Householder	16/07/2020	Erection of single storey rear extension, new entrance canopy and conversion of workshop into annex for parents	Forest Lodge Staylittie Llanbrynmair SY19 7DB
	Approve	23/06/2020	20/0967/NMA	Non-Material Amendment	07/07/2020	Application for a non-material amendment to planning approval 18/0693/REM in respect of design changes on Plot 26, replacement of dead tree with new Copper Beech, Re-siting of garages & parking spaces on plots 29 & 30 and re-positioning of plot boundaries to 28 & 29.	Plas Trannon Trefglwys Caersws SY17 5PW
	Approve	18/07/2019	19/1116/FUL	Full Application	13/07/2020	Erection of a dwelling and alterations to an existing access	Plot Adj To Turkanha Gungrog Hill Y Trallwng Powys
	Approve	27/03/2020	20/0520/FUL	Full Application	06/07/2020	The extension and internal remodelling of parish accommodation	St Winefride's Presbytery 2 Raven Street Welshpool SY21 7LR

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

	Approve	15/04/2020	20/0596/REM	Removal or Variation of Condition	14/07/2020	Section73 application to vary condition 2 in relation to planning approval 19/0099/FUL regarding approved plans	Lansdowne House Chapel Street Welshpool Powys SY21 7LB
	Approve	25/06/2020	20/0976/NMA	Non-Material Amendment	08/07/2020	Application for a non-material amendment to planning approval 19/1611/FUL in respect of minor alterations to the approved plans	Land At Buttington Cross Enterprise Park Buttington Welshpool Powys SY21 8SL
	Refused	28/02/2020	20/0320/FUL	Full Application	14/07/2020	Change of use from recycling area to car wash area including construction of a jet wash bay and associated works	Land Near Petrol Filling Station Tesco Store Smithfield Road Welshpool Powys SY21 7BL
Ystradgynlais Community	Approve	20/03/2020	20/0485/FUL	Full Application	17/07/2020	Erection of an information panel	Land Opposite New Tredegar Arms 23 Heol Gwys Upper Cwmtwrch Swansea Powys SA9 2XG

Tudalen 112

CODE: IDOX.PL.REP.05

20/07/2020 10:18:27 POWYSCC\sandraf

[← Go Back](#)



## Delegated List

### 55 Applications

Approve	09/04/2020	20/0474/HH	Householder	10/07/2020	Erection of a single storey detached garage and attached home office	18 Alder Avenue Ystradgynlais Powys SA9 1AQ
Approve	17/04/2020	20/0610/HH	Householder	13/07/2020	Erection of a second floor extension above existing kitchen	2 Penrhos Varteg Cottages Neath Road Ystradgynlais SA9 1PR
Approve	06/05/2020	20/0719/HH	Householder	01/07/2020	Demolition of the existing rear extension and erection of a single storey extension with flat roof and glazed lantern	5 Glan-Rhyd Road Ystradgynlais SA9 1AU
Approve	11/05/2020	20/0696/HH	Householder	30/06/2020	Erection of a single storey rear extension	9 Pelican Street Ystradgynlais SA9 1LG
Approve	04/06/2020	20/0844/HH	Householder	16/07/2020	Erection of a two storey extension	16 Alder Avenue Ystradgynlais Powys SA9 1AQ

Tudalen 113

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[CODE: IDOX.PL.REP.05](#)

[20/07/2020 10:18:27 POWYSCC\sandraf](#)

[← Go Back](#)

Mae'r dudalen hon wedi'i gadael yn wag yn fwiadol



## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/05/20

gan Alwyn B Nixon BSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26.06.2020

## Appeal Decision

Site visit made on 12/05/20

by Alwyn B Nixon BSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 26.06.2020

**Appeal Ref: APP/T6850/X/20/3244125**

**Site address: Oakcroft, Pentre, Churchstoke, Montgomery SY15 6ST**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs A Goodwin against the decision of Powys County Council.
- The application Ref P/2018/0528, dated 11 May 2018, was refused by notice dated 29 January 2020.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the unrestricted residential use of the dwelling known as Oakcroft.

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's decision to withhold a lawful development certificate was well founded.

### Background

3. Full planning permission (ref. M2003/0372) was granted on 5 January 2004 for the erection of a dwelling, installation of a septic tank and vehicular access at Oakcroft. Condition 2 of the permission required that the development be carried out in its entirety in accordance with the approved plans and specifications. In addition, a planning obligation by way of an agreement pursuant to section 106 of the Town and Country Planning Act 1990 ("the section 106 agreement") was executed in relation to the planning permission. The section 106 agreement restricts the occupation of the permitted dwelling, as set out in the Second Schedule. Occupancy is restricted initially to Mr & Mrs Goodwin, and upon any subsequent disposal of the property to a person meeting local residency or employment stipulations. A further specification within the Second Schedule is that any dwelling (excluding garages) constructed on the land shall not exceed a gross floorspace (including wall thickness) of 130 square metres.
4. The Council had not determined the application for a certificate of lawfulness when the appeal was made. However, it issued its decision within the dual jurisdiction period.

The appellant has produced a revised statement of case in the light of the Council's stated reason for not granting a certificate of lawfulness in respect of unrestricted occupancy of the dwelling.

## Reasons

5. The appellants' case in essence is that the dwelling known as Oakcroft, which was signed off as completed for building control purposes in May 2005, was not built in accordance with the plans approved by permission ref. M2003/0372 and exceeds the 130 square metre floorspace limitation specified in the Second Schedule of the section 106 agreement. As such, it is said, the dwelling was constructed without the benefit of planning permission; permission M2003/0372 has therefore not been implemented and the section 106 agreement is void and its provisions restricting occupancy are of no effect. As the dwelling was completed as long ago as 2005 it is now immune from enforcement action and, it is claimed, can lawfully be occupied without any restriction on residency.
6. The Council's view, in short, is that the evidence fails to demonstrate that the dwelling constructed at Oakcroft is materially different to the development permitted by permission M2003/0372. As such, the development is in accordance with that authorised by M2003/0372 and the section 106 agreement regarding restriction on occupancy remains in force.
7. The plans identifying the development permitted by planning permission M2003/0372 are not in dispute. They depict a two-storey dwelling having a rectilinear footprint with a staggered front elevation. The floorplans are dimensioned and show a gross floorspace (including wall thickness and excluding the attached garage and an external chimney stack on the side gable) totalling 131.73 square metres.
8. The appellant's contention that the dwelling as constructed is not that permitted by permission ref. M2003/0372 rests on the claim that the dwelling as built has a significantly greater floorspace than that allowed either by the planning permission or by the associated section 106 agreement. Such argument derives from the Court of Appeal judgement in *Handoll v Warner, Goodman and Streat & East Lindsey DC* (1995) which established that where the operational development is carried out in a way which differs materially from the approved plans, it amounts to development without planning permission. Also relevant to this argument is the judgement in *Commercial Land v SSTLGR* (2002), where it was held that in assessing whether a materially different operation is comprised in the development it is necessary to consider not only whether there are differences, but also to consider the significance of the differences.
9. In this case the appellants' agent has professionally surveyed the dimensions of the as-built dwelling, for the purpose of comparison with the dwelling as approved. The linear dimensions as surveyed are not in dispute. Based on these, the appellants' submission to the Council was that the relevant overall gross floorspace of the dwelling as built (calculated on the same basis as the 131.73 square metres for the dwelling depicted on the approved plans and as described above) totalled 133.44 square metres. As such, it was said, the "as built" dwelling is materially different to the details shown on the approved drawings and even more so in relation to the 130 square metres limitation contained in the section 106 agreement.
10. However, the calculation of 133.44 square metres is an error. Calculation of the gross floor area from the detailed linear dimensions taken from the appellants' surveyed "as built" drawing actually produces an "as built" gross floorspace figure of 130.62 square

metres. This arithmetical error has been drawn to the attention of the parties, who have confirmed that this corrected figure should prevail.

11. The corrected figure of 130.62 square metres is actually less (by just 1.11 square metres, or less than 1%) than the floorspace total derived from the dimensions on the plan approved by permission M2003/0372. Study of the discrepancies between the "as approved" and "as built" measurements shows that the resulting difference in floorspace is the product of very minor deviations in the construction of the various lengths of wall concerned, ranging between +20mm (less than 1 inch) and -60mm (about 2.4 inches). Some wall lengths have been built marginally longer than as approved; others are marginally shorter. In my view the extent of the deviations is insignificant; indeed, deviations of this magnitude could be expected to occur almost routinely in translating a stated dimension in millimetres on a drawing to bricks and mortar on the ground. I conclude that the dwelling as built is not materially different to that depicted on the drawings approved under ref. M2003/0372 and is in accordance with the development authorised by that planning permission. The minor differences between "as approved" and "as built" do not impact upon the dwelling's affordability, which underpins the justification for the occupancy restriction imposed.
12. Based on the corrected floorspace figures, the dwelling as built is just 0.62 square metres, or only 0.5%, greater than the 130 square metre limitation stipulated in the section 106 Agreement. There is an unfortunate inconsistency between the floorspace limitation cited in the section 106 Agreement and the slightly greater floorspace permitted by virtue of the plans approved under the associated planning permission. There is no suggestion that this is due to anything other than oversight or inattention to detail. However, while the circumstances are such that the development as built, whilst complying with the approved plans, marginally exceeds the floorspace limitation entered into via the section 106 Agreement, I see no reason why this would invalidate the other clauses in the Second Schedule of the Agreement relating to occupancy restrictions. The development has been carried out materially in accordance with planning permission ref. M2003/0372 and the associated section 106 Agreement remains in effect.
13. The point is made that the attached garage, which has a floorspace of about 37 square metres, has the potential to be converted into a further habitable room, thus increasing the living space still further. However, contrary to the assertion in the application statement to the Council, permission M2003/0372 contains a condition removing all rights to alter or improve the dwelling that would otherwise apply under Part 1 of the Second Schedule to the Town and Country Planning (General Permitted Development) Order 1995. Although about 11.5 square metres of the garage space is currently being used as a utility area, it is commonplace for garage space to be used in part for such purposes, for example to accommodate a freezer or to store other domestic appliances or items. Neither of these matters leads me to conclude that the calculation of dwelling floorspace as built, excluding the garage, should be reckoned as greater than 130.62 square metres.
14. I have also had regard to the judgement cited in *Kerrier District Council v SSE (1981)*. However, in that case, the finding that the development differed materially from the approved plans evidently rested on the fact that a basement shown on the approved plans had not been included in the development as carried. This case plainly concerns a much less significant difference between "as built" and "as approved", which is of an extent and nature that I have found on its facts to be non-material.
15. I note what is said regarding inconsistency between the approved dwelling and the imposed floorspace limitation imposed and the relevant development plan policy

(former UDP policy HP10) at the time that the application for the dwelling was determined. I note also that the current local development plan imposes stricter floorspace limitations than those in force when permission was granted for the dwelling at Oakcroft. However, these matters do not bear on the fundamental question in this LDC appeal (which is not an appeal arising from an application to discharge a restriction contained in the section 106 agreement) of whether the dwelling constructed at Oakcroft constitutes development carried out in accordance with planning permission M2003/0372. They are not relevant to the factual matter of whether the constraints on occupancy imposed by planning permission M2003/0372 and the associated section 106 agreement apply to the dwelling that has been built and I make no comment on these matters.

16. Similarly, whilst I have noted the references to various cases where there have been successful applications to discharge similar restrictions in section 106 agreements at other locations, I find these of little assistance in the context of this LDC appeal. The issue in this appeal concerns whether the section 106 occupancy limitation has effect in relation to the dwelling that has been constructed. The planning merits of the section 106 limitation do not come into this and I therefore do not comment either way as to the comparability of these other cases to the circumstances at Oakcroft.
17. I have taken account of all other points made but find nothing which disturbs my overall conclusion that the dwelling at Oakcroft has been constructed materially in accordance with planning permission M2003/0372 and that the limitations on occupancy contained in the section 106 agreement remain in force. Accordingly, and having taken account of all matters raised, I conclude that the Council's decision to withhold a lawful development certificate in respect of the unrestricted residential use of the dwelling was well founded. I therefore dismiss the appeal.

*Alwyn B Nixon*

**Inspector**