

--== Appendix A - Evidence ==--

Regarding Failure to Restore:

Letters in Correspondence with the Responsible public agencies:

Here are communications between myself and Mr Gareth Chapman, CEO and Head of Legal (at the time), MTCBC, and Ms Judith Jones, Head of Planning MTCBC.

n.b. The communiqués are listed in inverted date order; (latest at the top and oldest at the bottom)

They start in 2014 and then work through the period of sale of the Ffos-y-fran operation by Miller-Argent (South Wales) Ltd. to Gwent Investments Ltd. (as was; now Merthyr (South Wales) Ltd.) in 2015, 2016.

It can be seen that we had concerns about the restoration of the site stemming from the way that the mining company was working. They were still tipping heavily on the external spoil tips/overburden mounds 6 to 7 years into the operation, and it was becoming evident that the percentage of spoil to reinstate at the end of coal mining was far higher than we had envisaged. This was heavily back-loading the restoration exercise and it was becoming clear to us that the final restoration would cost far more because of it (as we understood the costs then).

We tried to get the CEO and Head of Planning, Mr Gareth Chapman, and the Head of Planning, Ms Judith Jones to accept this as a significant risk to the reclamation of the land and possibly to the public purse. We asked them to accommodate that risk by either increasing the mining companies contributions or make them change their operational methods to reduce the amount of restoration work at the end of the coal extraction phase. Again, we failed to get them to shift their position.

We rang the alarm bell 10 years ago, (though we had been raising concerns about the 'guarantee' arrangement prior to this), before this current owner took over the Ffos-y-fran operation, and when they were taking over, and the Local Authority had the opportunity to renegotiate the 'guarantee' or 'bond'. At this point the Welsh Government had already published their estimate of the restoration costs of opencast coalmines across Wales¹ and had highlighted that Ffos-y-fran was in danger of falling short on the funding for the work (In 2014, at £50 Million).

¹ <https://www.gov.wales/sites/default/files/publications/2019-07/failure-to-restore-opencast-coal-sites-in-south-wales.pdf> - Research into the failure to restore opencast coal sites in south Wales

From: FOI (Freedom of Information) [mailto:FOI@merthyr.gov.uk]
Sent: Wednesday, **August 3, 2016** 2:15 PM
To: 'Chris Austin'
Subject: EIR 587 [NOT PROTECTIVELY MARKED]

Classification: NOT PROTECTIVELY MARKED

Dear Sirs

**RE: ENVIRONMENTAL INFORMATION REGULATIONS 2004 -
INFORMATION REQUEST**

Thank you for your request for information about Ffos-Y-Fran which we received on 22 July 2016. Your request has been considered under the Environmental Information Regulations 2004.

Following a search of our paper and electronic records, we have established that the information you requested **is not held by Merthyr Tydfil County Borough Council**. The Council has relies on Regulation 12(4)(a) which relates to information that is not held or has been destroyed. As this information is not held the Council considers that the public interest test is not applicable.

We are sorry that we cannot help further on this occasion but if you are in any way dissatisfied with the handling of your request, or have any further information needs in the future then please contact the Freedom of Information Officer on 01685 725000 or FOI@merthyr.gov.uk. You have the right to appeal against our decision. If you wish to appeal please set out in writing your grounds of appeal and send to:

Deputy Monitoring Officer
Merthyr Tydfil County Borough Council
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

Tel: 01685 725000
Fax: 01685 725060
Email: legal@merthyr.gov.uk

Classification: NOT PROTECTIVELY MARKED

Dear Sirs

RE: ENVIRONMENTAL INFORMATION REGULATIONS 2004- INFORMATION REQUEST

We have considered your request and have carried out further searches in order to establish whether the information you have requested is held. Unfortunately we have not been successful in locating the information you require, as such we can confirm that our response sent to you on the 30 June 2016 is accurate.

We supply this based on your clarified request. If this is not what you wanted or if you feel we have not fully understood your request please do not hesitate to contact us to clarify your exact requirements. If you have any queries or concerns or are in any way dissatisfied with the handling of your request and you wish to make a complaint please contact the Legal Department on 01685 725000 or legal@merthyr.gov.uk. If you are not satisfied with the outcome of your complaint please contact the Councils Complaints Team on 01685 725000 or complaints@merthyr.gov.uk, alternatively you may wish to submit a complaint using the Councils [online complaints form](#). You maintain the right to request an internal review of the Councils response to your request. If you seek an internal review please set out in writing your grounds of appeal and send to:

Deputy Monitoring Officer
Merthyr Tydfil County Borough Council
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

Tel: 01685 725000
Fax: 01685 725060
Email: legal@merthyr.gov.uk

RE: FoI Request - Waste disposal at Ffos y Fran [NOT PROTECTIVELY MARKED]

Classification: NOT PROTECTIVELY MARKED

Dear Mr Austin,

I acknowledge receipt of your e-mail request under the FOIA.





This matter will now be dealt with by the FOIA officer of the Council.



Yours sincerely,

Gareth Chapman

Prif Weithredwr
Cyngor Bwrdeistref Sirol Merthyr Tudful

Chief Executive
Merthyr Tydfil County Borough Council

 Ffon/Phone: +44 (0)1685 725100
 E-Bost/EMail: [REDACTED]
 Rhynygrwyd/Web: <www.merthyr.gov.uk>
 Canolfan Ddinesig, Stryd y Castell, Merthyr Tudful, CF47 8AN / Civic Centre, Castle Street, Merthyr Tydfil, CF47 8AN

 Arhoswch! Meddyliwch am yr amgylchedd - oes angen argraffu'r ebost yma
 Please consider the environment - do you really need to print this email?

To GC from CA > Wednesday 20th July 2016

Mr Gareth Chapman, CEO, Merthyr Tydfil Borough Council (MTCBC)
CC: MTCBC Freedom of Information Officer

Re: Biffa and the Ffos-y-fran Opencast Coalmine – 20072016

Gareth,

Could you please provide me with, under the Freedom of Information Act, 2000, copies of all correspondence, minutes or transcripts of meetings between Biffa, or other waste processing companies, and MTCBC regarding the Ffos-y-fran opencast coalmine and its use, or possible use as a landfill or waste disposal site.

I have no preference as to how this is presented; either electronically or paper would be acceptable.

(nb - I have also copied this to the MTCBC Freedom of Information officer)

Many thanks for your indulgence,

Chris Austin

Wednesday 20th July 2016

e-mail; [REDACTED]

Tel: [REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Classification: NOT PROTECTIVELY MARKED

Dear Sir/Madam

RE: ENVIRONMENTAL INFORMATION REGULATIONS 2004- INFORMATION REQUEST

Thank you for your two requests for information about Ffos-Y-Fran which we received on 22 July 2016, your requests have been amalgamated to form one request. We are dealing with your request under the Environmental Information Regulations 2004. We are considering your request and you will receive the Councils full response within the statutory time limit of 20 working days, which in this instance is no later than 19 August 2016, unless the information is exempt or we require additional time to consider whether disclosure is in the public interest in accordance with Regulation 7 of the Regulations.

The Regulations define a number of exceptions that may prevent release of the information you have requested. There will be an assessment and if any of the exceptions categories apply then the information will not be released. You will be informed if this is the case, including your rights of appeal. If the information you request contains reference to a third party then they may be consulted prior to a decision being taken on whether or not to release the information to you. You may have to pay a fee for this information; we will consider this and let you know. If a fee is applicable the Council will issue you with a Fees Notice. The 20 working day time limit will not start until we receive your payment.

If you have any queries or concerns, please contact the Freedom of Information Officer on 01685 725000 or FOI@merthyr.gov.uk. You can find out more about the Regulations from the Information Commissioner at:

To GC from CA > Wednesday 20th July 2016

Mr Gareth Chapman, CEO, Merthyr Tydfil Borough Council (MTCBC)

CC: MTCBC Freedom of Information Officer

Re: Further Concerns on the Restoration of the Ffos-y-fran Opencast Coalmine – Revised 12072016

Gareth,

the response to my Freedom of Information (FoI) request in relation to the current situation regarding the Ffos-y-fran restoration guarantee has left me unsure of how to progress. With a 20 working day response time to my request to review the response, and there being no response as yet, coupled with the uncertainty of the conclusion, it may be better to submit a new request.

You previously stated that the responsibility for the restoration guarantee of £15 million is now with Miller Argent Holdings Limited, a subsidiary of the new parent company, Gwent Investments Ltd. I have examined the existing document on this guarantee and I cannot see that it could support such a condition. I believe that this

guarantee would have had to be renegotiated and agreed with the new owner of Miller-Argent (South Wales) Ltd, Gwent Investments Ltd, as there is nothing in the existing covenant that supports such an arrangement.

Could you please provide me with, under the Freedom of Information Act, 2000, copies of all current documentation securing and stating the details of the legally binding (or otherwise) agreement, for Gwent Investments Ltd (as the parent company) to provide an ongoing guarantee of £15 Million. Also, any further documentation which secures their liability for the further £15 Million due in 2022. This may be held by any of the parent company's subsidiary corporations which are, to the best of my knowledge; Miller Argent (South Wales) Limited, Miller Argent (Ffos-y-fran) Limited, Miller Argent (Nominee No. 1) Limited, but most especially, Miller Argent Holdings Limited.

As the subsidiary company, Miller Argent Holdings Limited wasn't named in the original guarantee agreement, there must be a new agreement detailing the responsibilities of said company, and probably those of Gwent Investments Limited, their current parent. I have attached a copy of the existing/historic agreement with the previous parent companies; Miller Group and Argent LLP, which may aid you in the search for the new agreement.

I have no preference as to how this is presented; either electronically or paper would be acceptable.

(nb - I have also copied this to the MTCBC Freedom of Information officer)

Many thanks for your indulgence,

Chris Austin

Wednesday 20th July 2016

e-mail; [REDACTED]

Tel: [REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: ENVIRONMENTAL INFORMATION REGULATIONS 2004- INFORMATION REQUEST

The Council acknowledges your clarification received on the 5 July 2016. We are currently reviewing our previous response to your request. Please note we are not treating your email dated the 5 July 2016 as a formal internal review at this time. We are considering your request and you will receive the Council's full response within the statutory timescale of 20 working days, unless the information is exempt or we require additional time to consider whether disclosure is in the public interest. If you have any queries or concerns then please contact me on 01685 725000 or FOI@merthyr.gov.uk. You can find out more about the Regulations from the Information Commissioner at:

Information Commissioner's Office (Wales)
2nd Floor
Churchill House
Churchill Way
Cardiff
CF10 2HH

Tel: 029 2067 8400

Fax: 029 2067 8399

Email: wales@ico.org.uk

Website: www.ico.org.uk

Responses to completed requests for information are published online within our disclosure log. Our disclosure log is located on our external website (www.merthyr.gov.uk).

Yours faithfully

Swyddog Rhyddid Gwybodaeth/Freedom of Information Officer
Adran Gyfreithiol/Legal Department
Cyngor Bwrdeistref Sirol Merthyr Tudful/Merthyr Tydfil County Borough
Council

To GC from CA > Monday 4th July 2016

Sir,

I find it surprising that the Council does not hold information relating to this because the Council is responsible for managing the operations at the site, including its restoration, and that the funds for carrying out this goes to the heart of that restoration. I understand that MTCBC owns a large part of the site and so the Council should have a real interest/concern in full and effective restoration.

I am seeking information on Gwent Investments Ltd's restoration responsibility, and as such, by direct association, their subsidiary companies (associated with the mining operation at Ffos-y-fran), as the parent company inherits their responsibilities. This would be Miller Argent (South Wales) Limited, Miller Argent Holdings Limited, etc...

In a previous communication, (16 02 02 (L) CAIGC) Mr. Gareth Chapman said "*In respect of the £15m Surety, this remains in place however it is now secured with Miller-Argent Holdings Limited. The Council has also secured that by January 2022 a cash deposit of £15m will also be available for restoration costs.*". I assumed that as the responsibility for the previous restoration guarantee was borne by the parent companies, the responsibility for any surety held by the subsidiary company, Miller-Argent Holdings Limited, would ultimately fall to the parent company, Gwent Investments Ltd. Miller argent holdings limited wasn't named in the original guarantee agreement, so there must be a new agreement detailing the responsibilities of said company, and hence Gwent Investments Limited as their current parent.

Could I respectfully request that you review your response to my request?

I trust that they have enough information to complete my request, but please do not hesitate to get back to me if there is any concern.

Yours sincerely,

Chris Austin

Subject:EIR 572

Date:Thu, 30 Jun 2016 13:45:56 +0000

From:FOI (Freedom of Information)

<mailto:FOI@merthyr.gov.uk><FOI@merthyr.gov.uk>

To:'Chris Austin' [REDACTED]

Dear Sirs

RE: ENVIRONMENTAL INFORMATION REGULATIONS 2004- INFORMATION REQUEST

Thank you for your request for information about Ffos-Y-Fran which we received on 15 June 2016. Your request has been considered under the Environmental Information Regulations 2004.

Following a search of our paper and electronic records, we have established that the information you requested is not held by Merthyr Tydfil County Borough Council. The Council has relies on Regulation 12(4)(a) which relates to information that is not held or has been destroyed. As this information is not held the Council considers that the public interest test is not applicable.

We are sorry that we cannot help further on this occasion but if you are in any way dissatisfied with the handling of your request, or have any further information needs in the future then please contact the Freedom of Information Officer on 01685 725000 or <mailto:FOI@merthyr.gov.uk><mailto:FOI@merthyr.gov.uk>FOI@merthyr.gov.uk. You have the right to appeal against our decision. If you wish to appeal please set out in writing your grounds of appeal and send to:

Deputy Monitoring Officer
Merthyr Tydfil County Borough Council
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

Tel: 01685 725000

Fax: 01685 725060

Email: legal@merthyr.gov.uk

The Deputy Monitor will complete an internal review of the Councils response. You can find out more about the Regulations from the Information Commissioner at:

Information Commissioner's Office (Wales)
2nd Floor
Churchill House
Churchill Way
Cardiff
CF10 2HH

Tel: 029 2067 8400

Fax: 029 2067 8399

Email: <mailto:wales@ico.org.uk><mailto:wales@ico.org.uk><mailto:wales@ico.org.uk>

Website: <http://www.ico.org.uk>/<http://www.ico.org.uk>/www.ico.org.uk

If you have any queries or concerns, or if I can be of any further assistance, please feel free to contact me.

Request for Information - FyF guarantee agreement

Mr Gareth Chapman
CEO, Merthyr Tydfil Borough Council (MTCBC)

Re: Further Concerns on the Restoration of the Ffos-y-fran Opencast Coalmine

Gareth,

in the light of recent events at Ffos-y-fran, with director resignations and further staff layoffs, our concern about the future of the operation has deepened. Also, the recently submitted annual return for Gwent Investments Ltd for 2015-2016 shows them with total assets of £1.8 Million, which further raises questions as to where the money for the restoration guarantee, or the restoration itself, would be found.

You previously stated that the responsibility for the restoration guarantee of £15 million is now with the new parent company, Gwent Investments Ltd. I have perused the existing legal document on this guarantee and I cannot see that it would support such a condition. I am not a legally trained person, so this is just my understanding of it, of course, but I would think that this guarantee would have had to be renegotiated and agreed with the new owner of Miller-Argent (South Wales) Ltd, Gwent Investments Ltd.

Could you please provide me with, under the Freedom of Information Act, 2000, copies of all current documentation securing and stating the details of the legally binding agreement (or otherwise), for Gwent Investments Ltd (as the parent company) to provide an ongoing guarantee of £15 Million. Also, any further documentation which secures their liability for the further £15 Million due in 2022.

I have no preference as to how this is presented; either electronically or paper would be acceptable.

(nb - I have also copied this to the MTCBC Freedom of Information officer)

Many thanks for your indulgence,

Chris Austin

Wednesday 15th June 2016

e-mail; [REDACTED]

Tel: [REDACTED]

Address:
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

=====

Gareth Chapman CSIJ., DL., LL.M., MBA., CMgr., DipLG., CCML., Solicitor
chief Executive/prif weithredwr til
Conolfon Ddinesig, Stryd y Costell,

Mr C Austin

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Merthyr Tudful, CF47 8AN
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MERTHYR TUDFUL

Date/Dyddiod: **21st March 2016**
e-mail/e-bost: chief.executive@merthyr.gov.uk

Dear Mr Austin

FFOS.Y.FRAN LAND RECLAMATION SCHEME

Thank you for the e-mail of the 7th March 2016, the contents of which are noted.
I must apologise for the delay in replying, however, I have now had the opportunity to review the documentation.

The document to which you refer issued in February 2016 is "Best Practice" and not legislation, however, much of what is suggested in the good practice was considered by the Council when negotiating the bond back in 2004/2005. The Agreement covering the bonding arrangements was entered into on the 30th March 2005.

As I advised on the 23rd February, the restoration of the site has begun, regular monitoring, progression and compliance with conditions in accordance with the relevant legislation is ongoing.

There are no concerns with the site operation or restoration at this time, but we will of course keep this under constant review and take action if and when necessary and appropriate.

You will also be aware that the Liaison Committee also monitors the progress of the scheme.

If I can be of any further assistance then please do not hesitate to contact me.

Yours sincerely,

Gareth Chapman
Chief Executive

Fao:

Gareth Chapman
Chief Executive
Merthyr Tydfil Borough Council

Chris Austin

[REDACTED]

7th March
2016

Mr Gareth Chapman
CEO
Merthyr Tydfil Borough Council

Sir,

Thank you for your reply (dated Tuesday 23rd February 2016) to my concerns about the situation with the transfer of ownership of Miller-Argent (South Wales) Ltd. **With the greatest respect, I am surprised that you do not agree that my 'what-if' scenario raises enough concern to merit immediate action.** I thought that I had constructed a **plausible and well-supported argument for the realisation of that scenario.**

I identified and analysed the risks and found the likelihood of them occurring to be high and that the impact on the public purse and the environment would be immense. That was enough grounds for me to expect to see a plan of action to explore the council's response to this tangible threat.

Rather than keep pressing my opinion, I have looked to planning procedure for support for my stance and I discovered a recent Welsh Government document that provides the relevant guidance and pulls together MTAN2:Coal, and Minerals Planning Policy Wales. It is the recently issued (*February 2016*) **'Best Practice Guide on Restoration Liability Assessments for Surface Coal Mines'** ^[2] - produced by The Coal Authority, on behalf of the Welsh Government.

This document appears to me to apply to existing, as well as new opencast coalmines. It also appears to require action of the local authority responsible for these operations.

² <http://gov.wales/docs/desh/publications/160218-restoration-liability-assessments-guide-for-surface-coal-mines-en.pdf> - Best Practice Guide on Restoration Liability Assessments for Surface Coal Mines - ISBN 978 1 4734 5775 1 - WG27790

I have reproduced a few of the more salient sections and paragraphs of the document here to illustrate my point:

2.5. This National Best Practice Guide applies to:

- (a) **Sites in operation including mobilisation, extraction or restoration phases**
- (b) Planning applications submitted for new sites or for lateral, depth or time extensions
- (c) Pre-application discussions relating to prospective new sites.

3. **Matters that the Local Authority should consider**

3.1. **In the absence of in-house expertise, the Local Authority should collaborate with an independent expert assessor or a lead authority shared service, if this is available.**

3.2. **The environmental and safety impact of an un-restored abandoned site.**

3.3. **The cost to the public purse of mitigating these risks and fully restoring the site from any point in time.**

3.4. **The risk of failure of an Operator (e.g. contracts/financial standing) leading to site abandonment and the cost of transition to a new Operator.**

3.5. **The risks associated with any proposed security arrangement.**

3.6. Whether they have access to the appropriate technical knowledge and experience required to fully assess the surface mining scheme design and operational risk complexities and its associated cost models to determine the restoration liability and risks associated with the scheme.

3.7. **The need for regular monitoring, and the review of the security arrangement is essential, preferably by an independent expert assessor.**

3.8. Expert legal advice should be sought at the outset to ensure that any Section 106 agreement attached to the planning permission **is drafted in a manner which reduces the opportunity for an Operator to be able to abandon a site without carrying out final restoration in accordance with the approved restoration plan.** Further guidance on the contents of the Section 106 is contained in Appendix A.

It has been brought to my attention that the enhanced land after restoration may be used as security for the restoration. In the case of Merthyr Common land being restored to green belt and common land then its utilisation would be extremely limited. I would think that its inherent value would be quite low and not much use to offset the restoration costs.

The document also alludes to this in Section 4: **Key Principles to be Adopted.** It says:

4.10. By agreement, and subject to the granting of any necessary planning permission, **enhanced end use land values may be used for security.** But it should be acknowledged that the Local Authority will have the ultimate control over securing such end use.

In Section 7: **Financial Risk Assessment** the guidance document states:

7.1. Once the security sum has been agreed following the Assessment and the tripartite meeting, **the Local Authority should seek independent financial advice to confirm the financial status of the Operator and the risks associated with the proposed security arrangement offered by the Operator.**

This appears, to me, to be encouraging the local authority to assess the company's ability to deliver on their security arrangement, and again, in the case of Ffos-y-fran, I would think that this is required action triggered by the change of the operator's parent company.

If you accept that this guidance applies to MTCBC in the case of Ffos-y-fran then I believe that Section 8; **Community Awareness** would apply. It states:

8. Community Awareness

8.1. The local community should be informed by the Local Authority that an Assessment has been scheduled and the planned re-assessment timeframe.

Details of the engagement process, as envisaged by MTAN2, should be set up to foster transparency i.e. site liaison committees, prompt circulation of minutes post meetings, community site visits and other means of communication/liaison such as websites.

I have culled sections out that I believe apply to local authorities responsible for operating opencast coalmines, but I hope that I can prevail on you to review the whole Welsh Government guidance document and verify my selection.

Could I ask you to please reconsider your, and MTCBC's, response to this issue in the light of the new guidance from the Welsh Government?

Could you also please confirm receipt of this e-mail?

Chris Austin

[REDACTED]
[REDACTED]

Chris Austin

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16th February 2016

Mr Gareth Chapman
CEO
Merthyr Tydfil Borough Council

Sir,

Thank you for your reply to my concerns about the situation with the takeover of Miller-Argent (South Wales) Ltd, [Your Ref: 16 02 02 (L) CA/GC] however it does not allay our fears for the future of operations at Ffos-y-fran.

It is good to see that the £15 Million surety responsibility has been transferred to Miller Argent Holdings Ltd, but that this, in itself, raises further concerns.

The situation prior to the transfer of ownership was that the parent companies were of good standing; 'blue chip' companies as such, and were of significant financial standing and had their good name to protect. This gave a certain level of confidence in their commitment to restore the site at the end of the operation. No such criteria applies to the new parent company, Gwent Investments Ltd, and as such the level of confidence in their ability to restore the site is immeasurably lower.

The company appears to have few assets, financial or otherwise, to its name and as such has little to call on to facilitate such a massively expensive civil engineering exercise; especially when the bulk of the restoration work will come at a time when the company will not be harvesting coal and making a profit.

As far as we can discern, the company's assets do not appear to go anywhere near to covering the cost of restoration; e.g. the mining machinery is on mortgage with HSBC. The land ownership is unclear to me, but the land on the common is worth very little as it cannot be developed extensively.

It is a lot easier to make a profit out of a mining operation if you have no other obligations than to mine the site; the operator only has to balance the cost of mining against the coal sales. The restoration of the site is 'dead money', i.e. it is expenditure with no financial return, and estimates put the cost of the project at many £10s of Millions, or even up to £100 Million; where is this money to come from?

Gwent Investments Ltd's statement, "*the new shareholders intend that it will be very much business as usual and the site operations will be unaffected by the change*" is but a statement of intent and carries little weight in law. It goes nowhere towards increasing our level of confidence in the future of the operation; that statement has to be qualified.

It is heartening to hear of a further £15 Million cash deposit in 2022, but that is on the long pole at 6 years in the future and unfortunately, our concerns would be realised in real time or at least in the very short-term future. We have not previously had sight of the arrangement to pay this money in the planning consent, or Section 106 agreements; is this a new arrangement? Is it the value of the restored land?

With both sureties now sitting with Miller Argent Holdings Ltd, a subsidiary of Gwent Investments Ltd, my understanding of the situation would be that, were the parent company to declare voluntary bankruptcy, Miller Argent Holdings Ltd. would also have to go, and so too all their assets, (if there were any), and this would be for the official receiver to apportion. The sureties would only be payable if there were assets that could be called upon, (and that would possibly not be the case here), and it would be in a strict pecking order; e.g. HMRC, wages, the bank, other creditors.

My understanding is that only the first phase of restoration has been completed, not several phases as you have stated. This restoration phase only happened after around 8 years of mining and is by far the smallest restoration phase. The bulk of the restoration work will not occur until the end of the operation.

This first phase of the restoration of Ffos-y-fran was completed by using 'short tipping', i.e. directly tipping the spoil from the mining operation into the South

Western corner, achieved by using the very cheapest and quickest method. The operator didn't take any spoil from the overburden/spoil heaps which means that, with the massive restoration task that remains, the most labour intensive and expensive part of the restoration project is yet to come.

The company were tipping on the spoil heaps, or overburden tips, up until quite recently, (and we are now over 8 years into the scheme). This is long-term storage, so the operator has significantly back loaded the project with the majority of the cost of restoration, and may be increasing the risk to the public purse day-on-day, as the operation progresses depending on the back-filling strategy employed from this point onwards.

I am led to believe that MTCBC are significant landowners on the Ffos-y-fran site and as such, if the company were to renege on its obligations to restore, the local authority would inherit a large proportion of the liability to restore the site. This has already happened at Margam with the Port Talbot local authority, and at many sites in Scotland previously. *[EDIT: please note that the mining company, Merthyr (South Wales) Ltd. bought the land at Ffos-y-fran/Merthyr Common quite recently - Chris Austin 20240421]*

The Merthyr Tydfil local authority surely must have a duty of care to investigate any significant threat to the public purse and put in place safety measures to limit the impact of such threats. I believe that this transfer of ownership has considerably raised the level of financial risk and it now poses a significant threat to the public purse. This has to, at least, trigger an investigation of the company's ability to complete this work with the aim of uncovering any potential risks, or to provide the reassurance that the local residents need, and deserve.

With this massive increase in the level of risk to the public purse, I ask you and MTCBC to perform detailed scrutiny of this company's ability to provide the full restoration of the Ffos-y-fran site and provide the aftercare services.

Could you please inform me as to your, and MTCBC's, course of action on this issue and the projected timescales? Could you also please confirm receipt of this e-mail communiqué?

Chris Austin

[REDACTED]
[REDACTED]

**RE: Restoration of ffos-y-fran [NOT PROTECTIVELY MARKED] > 23rd
february 2016**

Classification: NOT PROTECTIVELY MARKED

Dear Mr Austin,

I acknowledge receipt of your e-mail.

Much of what you raise is clearly your own opinion and analysis of the acquisition of the respective shareholding and “what could happen” (which I respect) upon which we will have to beg to differ.

I believe I can add no more to that contained in my earlier letter to you, as the Council will continue to monitor the site in accordance with the planning permission granted and accompanying agreements and if it becomes necessary and appropriate, take any balanced and proportionate action.

Yours sincerely,

Gareth Chapman
Chief Executive

Fao:

Gareth Chapman
Chief Executive
Merthyr Tydfil Borough Council

Chris Austin
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17th February 2016

Mr Gareth Chapman
CEO
Merthyr Tydfil Borough Council

Sir,

Thank you for your reply to my concerns about the situation with the takeover of Miller-Argent (South Wales) Ltd, [*Your Ref: 16 02 02 (L) CA/GC*] however it does not allay our fears for the future of operations at Ffos-y-fran.

It is good to see that the £15 Million surety responsibility has been transferred to Miller Argent Holdings Ltd, but that this, in itself, raises further concerns.

The situation prior to the transfer of ownership was that the parent companies were of good standing; 'blue chip' companies as such, and were of significant financial standing and had their good name to protect. This gave a certain level of confidence in their commitment to restore the site at the end of the operation. No such criteria applies to the new parent company, Gwent Investments Ltd, and as such the level of confidence in their ability to restore the site is immeasurably lower.

The company appears to have few assets, financial or otherwise, to its name and as such has little to call on to facilitate such a massively expensive civil engineering exercise; especially when the bulk of the restoration work will come at a time when the company will not be harvesting coal and making a profit.

As far as we can discern, the company's assets do not appear to go anywhere near to covering the cost of restoration; e.g. the mining machinery is on mortgage with HSBC. The land ownership is unclear to me, but the land on the common is worth very little as it cannot be developed extensively.

It is a lot easier to make a profit out of a mining operation if you have no other obligations than to mine the site; the operator only has to balance the cost of mining against the coal sales. The restoration of the site is 'dead money', i.e. it is expenditure with no financial return, and estimates put the cost of the project at many £10s of Millions, and even up to £100 Million; where is this money to come from?

Gwent Investments Ltd's statement, "*the new shareholders intend that it will be very much business as usual and the site operations will be unaffected by the change*" is but a statement of intent and carries little weight in law. It goes nowhere towards increasing our level of confidence in the future of the operation; that statement has to be qualified.

It is heartening to hear of a further £15 Million cash deposit in 2022, but that is on the long pole at 6 years in the future and unfortunately, our concerns would be realised in real time or at least in the very short-term future. We have not previously had sight of the arrangement to pay this money in the planning consent, or Section 106 agreements; is this a new arrangement? Is it the value of the restored land?

With both sureties now sitting with Miller Argent Holdings Ltd, a subsidiary of Gwent Investments Ltd, my understanding of the situation would be that, were the parent company to declare voluntary bankruptcy, Miller Argent Holdings Ltd. would also have to go, and so too all their assets, (if there were any), and this would be for the official receiver to apportion. The sureties would only be payable if there were assets that could be called upon, (and that would possibly not be the case here), and it would be in a strict pecking order; e.g. HMRC, wages, the bank, other creditors.

My understanding is that only the first phase of restoration has been completed, not several phases as you have stated. This restoration phase only happened after around 8 years of mining and is by far the smallest restoration phase. The bulk of the restoration work will not occur until the end of the operation.

This first phase of the restoration of Ffos-y-fran was completed by using 'short tipping', i.e. directly tipping the spoil from the mining operation into the South Western corner, achieved by using the very cheapest and quickest method. The operator didn't take any spoil from the overburden/spoil heaps which means that, with the massive restoration task that remains, the most labour intensive and expensive part of the restoration project is yet to come.

The company were tipping on the spoil heaps, or overburden tips, up until quite recently, (and we are now over 8 years into the scheme). This is long-term storage, so the operator has significantly back loaded the project with the majority of the cost of restoration, and may be increasing the risk to the public purse day-on-day, as the operation progresses depending on the back-filling strategy employed from this point onwards.

I am led to believe that MTCBC are significant landowners on the Ffos-y-fran site and as such, if the company were to renege on its obligations to restore, the local authority would inherit a large proportion of the liability to restore the site. This has already happened at Margam with the Port Talbot local authority, and at many sites in Scotland previously.

The Merthyr Tydfil local authority surely must have a duty of care to investigate any significant threat to the public purse and put in place safety measures to limit the impact of such threats. I believe that this transfer of ownership has considerably raised the level of financial risk and it now poses a significant threat to the public purse. This

has to, at least, trigger an investigation of the company's ability to complete this work with the aim of uncovering any potential risks, or to provide the reassurance that the local residents need, and deserve.

With this massive increase in the level of risk to the public purse, I ask you and MTCBC to perform detailed scrutiny of this company's ability to provide the full restoration of the Ffos-y-fran site and provide the aftercare services.

Could you please inform me as to your, and MTCBC's, course of action on this issue and the projected timescales? Could you also please confirm receipt of this e-mail communiqué?

Chris Austin

██████████
██

Gareth Chapman CStJ., DL., LL.M., MBA., CMgr., DipLG., CCMI., Solicitor
Chief Executive/*Prif Weithredwr*

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Mr C Austin
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Merthyr Tydfil
CF47 0GD

Date/*Dyddiad*: 2nd February 2016

Our ref./*Ein Cyf.*: 16 02 02 (L) CA/GC
Your ref./*Eich Cyf.*:

Please ask for/*Gofynnwch am*: Gareth Chapman
Direct Line/*Llinell Uniongyrchol*: (01685) 725100
e-mail/*e-bost*: chief.executive@merthyr.gov.uk

Dear Mr Austin

FFOS-Y-FRAN LAND RECLAMATION SCHEME

I thank you for your letter of the 14th January 2016, the contents of which are noted.

Many of the issues you raise are not matters for and over which the Council has no control and you should therefore seek your own independent advice thereon.

The Council was however advised on the 7th January 2016 that on that day, The Miller Group and the Argent Group had completed a sale of their respective shareholding in Miller Argent Holdings Limited. The new shareholder as you state was Gwent Investments Limited.

The Council has been advised that "the new shareholders intend that it will be very much business as usual and the site operations will be unaffected by the change" however as the Planning Permission and s 106 Agreement continues to run with the land then the Council will continue to monitor the site accordingly.

In respect of the £15m Surety, this remains in place however it is now secured with Miller Argent Holdings Limited. The Council has also secured that by January 2022 a cash deposit of £15m will also be available for restoration costs.

I need not remind you that restoration of the scheme is proceeding on a phased basis as agreed with the Planning Authority, with several phases already completed.

Yours sincerely



Gareth Chapman
Chief Executive

Merthyr Tydfil
... a place to be proud of

*Merthyr Tudful
... lle i fod yn falch ohono*

Chris Austin
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14th January 2016

Mr Gareth Chapman
CEO
Merthyr Tydfil Borough Council

Sir,

There is much news circulating about Miller-Argent (South Wales) Limited being in the process of transferring their company ownership, and hence their operation at Ffos-y-fran. Some are even saying that this has been completed. We have copies of companies House documentation showing the movement of 10.4 million shares from Miller Argent to Gwent Investments Limited.

We are obviously very concerned about the implications of this move and we need to know where we stand with the obligations and responsibilities imposed on the company by the planning consent.

I have written to the Head of Planning, Ms Judith Jones and asked her what the implications are of such a move, but I need have confirmation from yourself that this is, in fact, an ownership transfer and that MTCBC are as concerned as we are of the possible repercussions.

Could you please provide us with answers to the following questions? *(some of which have been asked of Ms Judith Jones)*

1. Can you confirm that a transfer of ownership has occurred?
2. If this isn't being termed a transfer of ownership, what is the purpose of the company moving its shares?
3. Will the new owner continue to operate Ffos-y-fran LRS? Has MTCBC had any assurances of this?
4. Is the responsibility to restore the site to be transferred to the new owner/company?
5. If Point 4 is true, the existing restoration legal agreement states that in the event of Miller Argent (South Wales) Ltd walking away from the operation at Ffos-y-fran, or going into liquidation, then the two parent companies – Miller Group and Argent would be liable for the cost of the restoration up to the sum of £15 million. How would this transfer to the new company? Has that event already been triggered by the transfer of ownership? If the new owner defaults or collapses the business, who would then be responsible for the restoration guarantee?
6. Do all the existing planning constraints, e.g. operating hours, still apply to the new owner/company?

Chris Austin

Ellis Cooper
Director of Customer Services
Cyfarwyddwr Gwasanaethau Cwsmeriaid
Miss J Jones – Head of Town Planning /Pennaeth Cynllunio Trefol

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Dyddiad/Date : 9th June 2014

Ein Cyf/Our Ref.:P/
Eich Cyf/Your Ref.:

Llinell Uniongyrchol/Direct Line : 01685 726201
Gofynnwch am/Please Ask For : Miss J Jones
E-bost/E-mail : judith.jones@merthyr.gov.uk

Dear Sir & Madam

RE: FFOS Y FRAN RESTORATION POLICY

I write in reply to your undated letter attached to your email of 13th May 2014 and would reply as follows in response to the seven questions posed:-

Q1 – *Are both the FyF Restoration Policy document and the FyF Planning Consent document legally binding?* – It is for you to take your own legal advice on this matter.

Q2 – *Do you agree that the statements itemised above as extracts from the FyF Restoration Policy document and the FyF Planning Consent document conflict fundamentally?* No, I clarified this in my previous response to you.

Q3 – *Do you agree that the statement in the Miller-Argent minutes (Nant Llesg community forum 6th November 2013) conflicts with the duration statement from the Planning Consent document?* I understand that there was an error in the minutes in relation to this point and that a clarification note has now been added for clarity. No doubt Caerphilly CBC (as the administrative authority for the scheme) can advise further.

Q4 – *If the document that we were shown of the FyF Restoration Policy does not form part of the formal planning documentation set, could you please provide us with, or let us have sight of a copy of the formally accepted restoration policy for our perusal?* As you will be aware it is a condition of the planning consent that all documents pertaining to the scheme are permanently maintained and available for inspection at the Miller Argent Site / office. I respectfully suggest that you attend the offices of the developer where the documentation is available. Alternatively, by prior appointment you may attend the Council's planning office in Pentrebach to view the documents.

Q5 – *Would you please confirm that the operator's activities are fully in compliance with all the planning permissions and conditions that have been imposed?* Monitoring visits to the site have not revealed any breaches.

Q6 – *Could you please inform me as to the steps (if any) that MTCBC will now take to require the operators to backfill with overburden? As stated in Q5 I do not consider there to a breach of the planning permission.*

Q7 – *Could you also please supply us with a copy of the detailed plans for the restoration work that is being carried out in the corner of the site facing the A4060 roundabout and up alongside the Bogey Road past the Incline Side houses? Please refer to the answer to question 4.*

Yours faithfully



J JONES
HEAD OF TOWN PLANNING

Chris and Alyson Austin

[Redacted signature area]

Judith Jones
Head of Planning – MTCBC

Re: Concerns on the Restoration Policy of Ffos-y-fran (dated 17th April 2014)

thank you for putting together such a comprehensive reply to our concerns, but even so, you have failed to attend to all the issues that we raised.

We are very disappointed to find that you have just noted our concern on the 'bond' negotiated to safeguard restoration of the Ffos-y-fran operation should the operator default on their obligations. Issues with the possibly inadequate bond are of great concern to local residents, the Welsh Government, the Scottish Government and now the UK government. With an estimated shortfall indication of at least £35 million on this 'bond' I would think that the MTCBC planning department would

want to be seen to be feverishly trying to limit the impact and put safeguards in place to cover the worst case scenario.

It has been suggested that MTCBC could even be adjudged to be negligent if the bond is insufficient to cover the remediation work should activities cease at any point in time. The Wales Audit Office may have an interest in this situation as public money would be needed to reinstate the site - as East Ayrshire have found out to their cost. It should also be noted that East Ayrshire has now started disciplinary proceedings against its own employees in relation to their role in the opencast scandal there (*"Deficient" and "Defective": East Ayrshire Council going down with their ship* > <http://coalactionscotland.org.uk/2014/02/deficient-and-defective-east-ayrshire-council-going-down-with-their-ship/>), so a precedent has already been set for public servants undergoing disciplinary action.

I will itemise our concerns here to help provide you with a focus on the specific arguments that we are raising.

Project Duration

I assume your first reply refers to our concern about conflicting statements held in planning documentation for Ffos-y-fran opencast coal mine. Both the Ffos-y-fran Restoration Policy document and the Ffos-y-fran Planning Consent document are held by you and were presented to us in hard copy format by your colleague, Mr David Cross, in the MTCBC planning office, so I am surprised that you have no knowledge of the document and have to go back to Miller-Argent for clarification. The Restoration Policy document was produced by Leeke and Weston on behalf of Miller-Argent and the hard copy that we were given access to carried the MTCBC stamp.

In our original communiqué we said: *"Section 9.6 of the Restoration Policy we found a statement that specified the duration of coaling. It said: '...recovery of coal by opencast methods which will take between 13.5 and 17 years to extract, depending on the coal delivery rate'. This statement could support what the statement in the Nant Llesg community forum minutes. We have found the reference in the planning consent, and it said that the operations were to be: 'Duration of Works. The coal extraction shall cease within 15 years 3 months from commencement of development'. These are very much conflicting statements and we can't see how both can be true".*

Along with the statement from Miller-Argent in reply to an answer to a resident's question in the [Nant Llesg community forum 6th November 2013](#), it was stated that the Ffos-y-fran overburden mounds would be in place for

another 13.5 years ^[3]. We were told during the planning consent phase that Ffos-y-Fran operations were to be 15 years of coaling and 2.5 years of restoration with another 5 years of aftercare. As work started in June 2007 that would put the end of the restoration project in 2024. That's in 10.5 year's time, not 13.5 years; that would put the project end well off in 2027.

This alone should surely be enough to trigger concern within MTCBC and prompt an investigation.

- **Question 1:** Are both the Ffos-y-fran Restoration Policy document and the Ffos-y-fran Planning Consent document legally binding?
- **Question 2:** Do you agree that the statements itemised above as extracts from the Ffos-y-fran Restoration Policy document and the Ffos-y-fran Planning Consent document conflict fundamentally?
- **Question 3:** Do you agree that the statement in the Miller-Argent minutes ([Nant Llesg community forum 6th November 2013](#)) conflicts with the duration statement from the Planning Consent document?
- **Question 4:** If the document that we were shown on the Ffos-y-fran Restoration Policy does not form part of the formal planning documentation set, could you please provide us with, or let us have sight of a copy of the formally accepted restoration policy for our perusal?

We are not clear what you are trying to say with your statement:

2 – As you are aware the S73 application allowing the transportation of coal by road was permitted subject to conditions specifying that:-

"All coal extraction from the development hereby permitted shall cease no later than 6th September 2022".

The following condition goes on to state that:-

"Final restoration of the land shall be completed no later than 6th December 2024 and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme".

This, surely, supports what we are saying, not refutes it? We are arguing inconsistency in the statements from the operator, Miller-Argent and from the Restoration Policy document and that they do not comply with the planning

³ *Overburden mounds: a question was asked in relation to how long the existing Ffos-y-fran overburden mound would be in place. It was explained that this would be in place for another 13.5 years.*

consent. Your statement here supports the planning consent and highlights the inconsistencies in the other documentation.

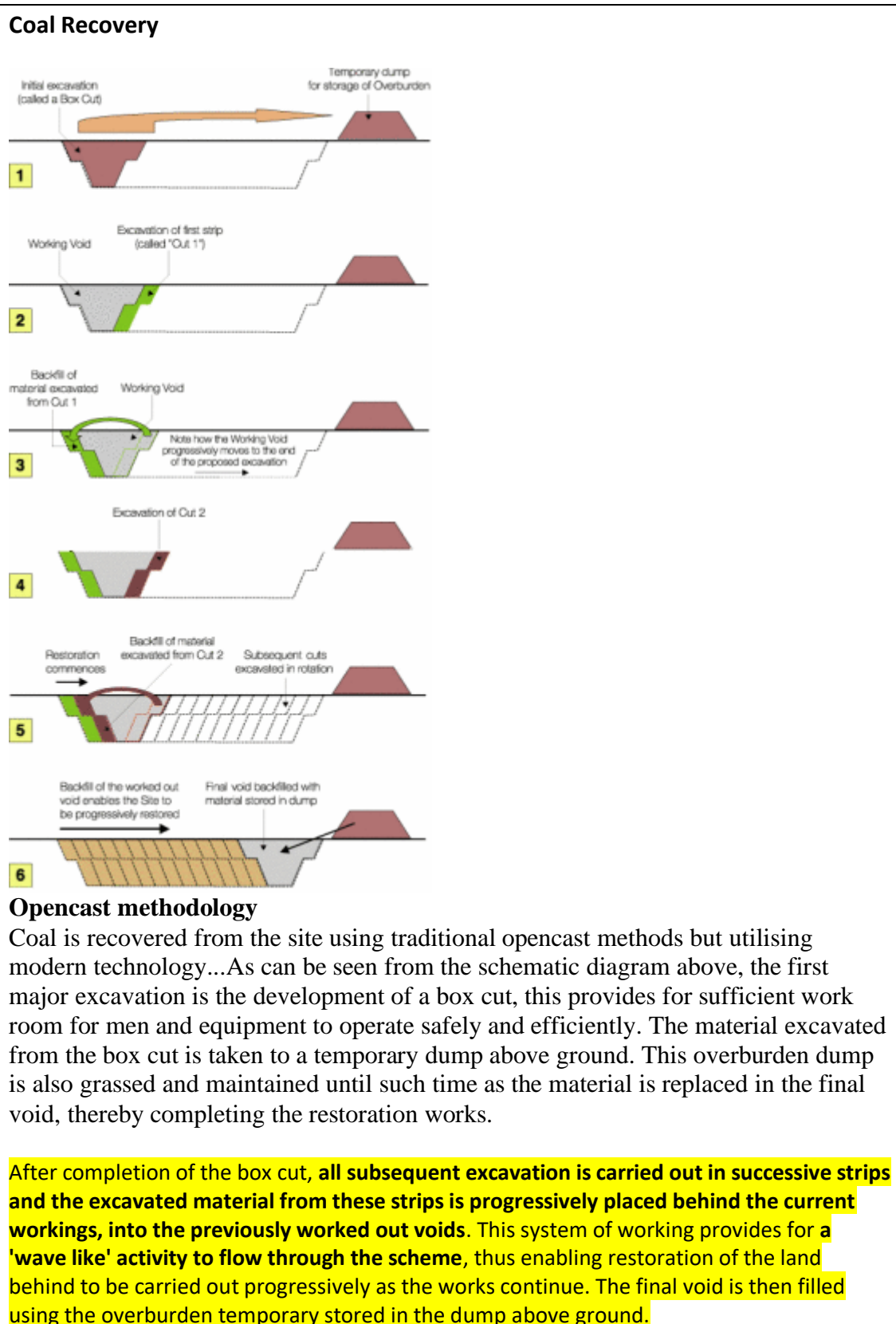
Project Timeline

We maintain that the operator has consistently stated that they will be operating a cut-and-fill operation and that they would be backfilling the void as they go along. Their original documentation states this, and they have stuck to this statement throughout.

Miller-Argent's Ffos-y-fran newsletter No. 001 states:

*'Work on the main site will start with the excavation of the main working void in the South Western area of the site; as well as the recycling of the old waste tips. **The site will be progressively restored** as it is worked South to North, with the **land in the south being fully restored as early as the sixth year of working**. Ultimately, the restored site will be landscaped to reflect the historic setting that existed before the Industrial Revolution took its toll'*

An excerpt from the Miller-Argent website details the Ffos-y-fran Work Methodology as:



If you take the opportunity to carry out a site inspection now, it can clearly be seen from the operator's current working practice that, 6.5 years into the project, Miller-Argent are still storing the majority of their spoil on the overburden mounds. These mounds have been expanded to a degree that is obviously beyond all original estimates and statements.

As we stated in our original letter:

'With the bulk of the restoration work to be carried out at the back end of the project, from 13-17 years we are extremely concerned that we, the local residents, will be suffering the dust and noise from the operation for another 10 years, and that the restoration costs would far exceed the bond value.'

We have been consistently told that the company would operate a cut-and-fill operation and that they would be backfilling the void as they go; in effect the 'void' would move across the site from South to North and the restoration work would follow this through. This would consequently have resulted in a void of a consistent size. When we have complained to the company about noise and dust pollution they have, without fail, told us that the operation and hence the void would be moving away from us, and our problems would diminish.

Promises of this 'movement away' have been anywhere between 18 months to 5 years. They are still there after 6.5 years, and so is the majority of the initial void'.

Financial Risks to MTCBC

It is becoming patently clear to us that Miller-Argent is working in a manner that differs from that which they have stated throughout the operation to date. I would be grateful if you could confirm that their activities are fully in compliance with all the planning permissions and conditions that have been imposed. I should also be grateful if you could inform me as to the steps (if any) that MTCBC will now take to require the operators to backfill with overburden. This would enable MTCBC to limit the impact on the bond, and possibly the public purse, of the remaining restoration work.

- **Question 5:** Would you please confirm that the operator's activities are fully in compliance with all the planning permissions and conditions that have been imposed
- **Question 6:** Could you please inform me as to the steps (if any) that MTCBC will now take to require the operators to backfill with overburden

You may not be able to legally increase the size of the bond at this stage, but it is well within your control and remit to limit the financial impact of future operations on the Ffos-y-fran site. You are the authority, and our representative in this

operation. You have a duty of care to the Merthyr Tydfil residents to do everything you can to limit further excessive spoil tipping and to protect the tax payer from the possible future cost of restoring the site.

As we said previously: '*...recent events in Scotland have illustrated these financial shortfalls when Scottish Coal, and ATH resources collapsed leaving the restoration of their opencast mines to the public purse. The administrator has found somewhere around £28 Million in bonds to restore the work, but the shortfall for this restoration ^[4] is now [exceeding £200 Million](#) and is increasing as more detailed analysis is performed. Along with the recent demise of Aberpergwm in the Neath valley, and the deep mines run by UK coal in the North of England then the thought of a mining company going bust is a very tangible one and should be treated as a serious possibility.*

If you also take into account the current volatility of the global coal market caused by overproduction coming primarily from a run down of the use of coal and the switchover to gas from 'fracking' then it makes the scenario of insolvency a far greater possibility'.

We can't be too complacent, bigger companies than the Miller group have gone to the wall recently! Certainly bigger companies than Miller mining!

The Welsh Government have recently published the results of a report that they commissioned from Environmental Resources Management to look into restoration bond issues with South Wales opencast coal mines, *Research into the failure to restore opencast coal sites in South Wales*, [\[http://wales.gov.uk/docs/desh/research/140424failure-to-restore-opencast-coal-sites-in-south-wales-en.pdf\]](http://wales.gov.uk/docs/desh/research/140424failure-to-restore-opencast-coal-sites-in-south-wales-en.pdf) . Ffos-y-fran was identified as a site that is a **potential risk**. The report said of Ffos-y-fran:

4.3.3

Sites with potential risk Ffos-Y-Fran, Merthyr Tydfil.

This 400 ha site is operated by Miller Argent (South Wales) Ltd, and there remains an estimated 6.6 million (m) tonnes of coal to be extracted, from a total anticipated reserve of 10.8 m tonnes. The site is quite confined and is being worked to a depth in excess of 150 m from the surrounding ground level in places. Although there is as much progressive restoration taking place as the site permits, there are very large overburden mounds which will finally need to be returned to the excavated void. Based merely on the likely cost of bulk earthmoving of those overburden mounds, and the final restoration and treatment of the surface of the 400 ha site, it is likely that **the fixed bond of £15m held by the LPA, Merthyr Tydfil County Borough Council, falls well short of a worst case restoration cost which could be in excess of £50 m based on the collected information.** *[nb - it is our understanding that the bond is not lodged; no actual money exists, it is just a guarantor arrangement. - ChrisA]*

⁴ <http://www.heraldscotland.com/news/environment/councils-left-with-200m-shortfall-in-funds-to-clean-up-opencast-mines.22898637> - Councils left with £200m shortfall in funds to clean up opencast mines

You say in your statement number 3, 'The local planning authority carry out a series of site visits every year to monitor compliance with planning conditions'. When we discussed the massive spoil tipping work around the old overburden mounds, the planning officer was unaware. We would suggest that you take the opportunity to acquaint yourselves with the current tipping situation. The company has been tipping massively all around the old overburden mounds adding millions of tonnes of spoil to the restoration load.

As we have another 11 years of work on this site there is much the planning authority can achieve to limit the future impact of the operation.

Restoration Policy, Strategy and Plans

Local residents have contacted us with concerns about the height of the backfill/restoration work next to the Incline Side houses and around and up the A4060 from the roundabout.

Apparently, the work has achieved a height far in excess of that expected from original consultations with the mining company, and it is still rising. We have concerns about the ultimate height, the slope of the face, potential water drainage issues, and settlement. We are also concerned that this significant increase in height is a further attempt to manage the excessive overburden/spoil tipping.

As they have been restoring this section of the site for about a year now Miller-Argent must have produced detailed plans of this work, and must have lodged them with the MTCBC planning department. We and other local residents would like to have sight of these plans to try and discern what the final shape and size is of the restoration and when it will be finished.

- **Question 7:** Could you also please supply us with a copy of the detailed plans for the restoration work that is being carried out in the corner of the site facing the A4060 roundabout and up alongside the Bogey Road past the Incline Side houses?

Could you please supply us with answers to our concerns above?

Chris and Alyson Austin

Tuesday 13th May 2014

GARY THOMAS M.C.I.H.
Director of Customer Services
Cyfarwyddwr Gwasanaethau Cwsmeriaid
Miss J Jones – Head of Town Planning /Pennaeth Cynllunio Trefol

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Dyddiad/Date : 6th May 2014

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Dear Sir and Madam

RE: FFOS Y FRAN RESTORATION POLICY

I write in reply to your undated letter, attached to your email of 18th April 2014.

The letter raises concerns in relation to the Ffos y Fran restoration policy, specifically project duration, project timeline and the financial risks to this Council of the current restoration strategy. The information contained therein and the series of statements made are noted.

I offer the following comments in response to the concerns raised on pages 3 and 4 of the letter:-

1 – I am not aware of the statement you refer too. I can ask Miller Argent for clarification.

2 – As you are aware the S73 application allowing the transportation of coal by road was permitted subject to conditions specifying that:-

“All coal extraction from the development hereby permitted shall cease no later than 6th September 2022”.

The following condition goes on to state that:-

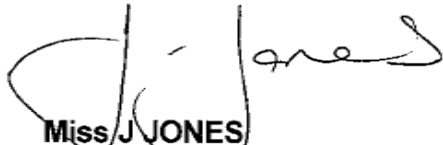
“Final restoration of the land shall be completed no later than 6th December 2024 and aftercare shall be undertaken for a period of not less than 5 years upon certification of completion of each phase of the progressive restoration scheme”.

3 – The Local Planning Authority carry out a series of site visits to Ffos Y Fran every year to monitor compliance with planning conditions.

4 – Your comments and concerns outlined at point 4 are noted. The restoration bond forms part of a legal agreement between the Council and Miller Argent.

With reference to your request for copies of plans, please provide me with the reference / drawing No's and I will arrange for copies to be made.

Yours faithfully



Miss J JONES
HEAD OF TOWN PLANNING

Chris and Alyson Austin

[REDACTED]

Judith Jones
Head of Planning – MTCBC

Concerns on the Restoration Policy of Ffos-y-fran

As residents living near to the Ffos-y-fran mining operation, we are sensitive to the operations on the site. We have noticed things recently that have concerned us and with a statement that we read in the minutes of the Nant Llesg community forum recently it has prompted us to raise our concerns with you.

Our concerns break down roughly into 3 topics; project duration; project timeline; financial risks to MTCBC of the current restoration strategy.

In an answer to a resident's question in the [Nant Llesg community forum 6th November 2013](#), it was stated that the Ffos-y-fran overburden mounds would be in place for another 13.5 years^[5]. We were told during the planning consent phase that Ffos-y-Fran operations were to be 15 years of coaling and 2.5 years of restoration with another 5 years of aftercare. As work started in June 2007 that would put the end of the restoration project in 2024. That's in 10.5 year's time, not 13.5 years; that would put the project end in 2027.

We are watching the work progress and have grave concerns about the fact that the operator is still tipping significant amounts of spoil on the overburden mounds, continuously, and wherever they can find space. They have revisited old sites and are joining two overburden together now with a spoil bridge. The overburden by the railway line has been extended to a significant degree, both along its length and at the end facing Fochriw. Although some backfilling has been performed, it is very much the minority of the spoil that is being tipped there.

We visited the MTCBC Planning Office on Thursday 17/04/2014 and spoke with David Cross about our issues. He gave us copies of the planning consent and the restoration policy to peruse.

⁵ *Overburden mounds: a question was asked in relation to how long the existing Ffos-y-fran overburden mound would be in place. It was explained that this would be in place for another 13.5 years.*

We were extremely concerned to find several statements in the restoration policy that in some way supported their current working method, and some of their recent statements; superficially, anyway.

In Section 9.6 of the restoration policy we found a statement that specified the duration of coaling. It said: *'...recovery of coal by opencast methods which will take between 13.5 and 17 years to extract, depending on the coal delivery rate'*. This statement could support what the statement in the Nant Llesg community forum minutes. We have found the reference in the planning consent, and it said that the operations were to be: *'Duration of Works. The coal extraction shall cease within 15 years 3 months from commencement of development'*.

These are very much conflicting statements and we can't see how both can be true.

Also, we read in paragraph 3.13 that: *'Based on the extraction rate of 1 million tonnes of coal per year, some 26 Ha will have been restored at the end of Phase II, approximately 6 years after the start of excavation'* and *'...68Ha at the end of Phase III, at approximately 12 years'* and *'146 Ha at the end of Phase IV, at approximately 13 years'* and then *'...the remaining 255 Ha to be restored in the following 2 years'*.

From this we determine that the bulk of the restoration work will wait until the end of the project.

With the 'restoration' works that they have already carried out I wouldn't be surprised if it's too far short of the 26 Ha already. So, 6.5 years into the operation (almost 40% complete) we have only a small area of backfill restored, and this may be as much as is required to meet their obligations to date.

With the bulk of the restoration work to be carried out at the back end of the project, from 13-17 years we are extremely concerned that we, the local residents, will be suffering the dust and noise from the operation for another 10 years.

We have been consistently told that the company would operate a cut-and-fill operation and that they would be backfilling the void as they go; in effect the 'void' would move across the site from South to North and the restoration work would follow this through. This would consequently have resulted in a void of a consistent size. When we have complained to the company about noise and dust pollution they have, without fail, told us that the operation and hence the void would be moving away from us. Promises of this 'movement away' have been anywhere between 18 months to 5 years. They are still there after 6.5 years, and so is the majority of the initial void.

In addition, in paragraph 3.12 it is stated that: *'Detailed restoration plans for each phase of the scheme will be submitted for the approval of the Planning Authority at*

least 6 months prior to the cessation of the replacement of overburden in that phase' [Chris A EDIT - we never have had sight of these detailed plans]

The phases of work are defined in the restoration document as:

Phase 1	Preliminary operations
Phase 2	Excavation to maximum void
Phase 3	Excavation to end of coaling
Phase 4	Final void restoration

nb There is a confusion of terms in this document between 'phases of work' and 'phases of restoration' which makes it difficult to determine clearly what is being stated

From this, we can only conclude that the operator will not have to produce detailed plans of the restoration until the very last phase of the mining operation.

Work has started on the restoration work in the corner of the site facing the A4060 roundabout. We would like to know whether this restoration work has been performed with the benefit of approved detailed restoration plans.

From our observations and our initial skim of the restoration documentation, we have identified the following concerns:

1. The operator has apparently issued a statement of intent to work beyond the agreed duration for the project as stated in their planning consent. This needs clarification and resolution.
2. Are the conflicting statements in the planning consent and the restoration document an error, or do they somehow co-exist and hence support the operator's statement in the Nant Llesg community forum minutes?
3. Is Merthyr Tydfil CBC Planning Department satisfied that all the conditions attached to the planning consent are currently being met?
4. With the lion's share of the backfilling from the overburden apparently not occurring until the final years of the operation there is a high risk of:
 - a. the local community suffering the adverse effects of the mining operation for virtually the entire duration of the operation, ie 17 years
 - b. the local community suffering the visual impact of massive, and still expanding, overburden mounds until the end of the operation, another 10 years
 - c. the £15 Million restoration bond being exceeded. With the initial working strategy stated as cut-and-fill, the operator would have effectively been carrying out ongoing back-filling and restoration work, under those circumstances, if the operator were to pull-out at any point, the restoration costs would be to cover whatever work they had left to do. But, as they

appear to be back-loading the project then restoration of the site grows day-on-day in size and cost. The later they 'pull-out' of the operation, then the larger the restoration costs will be. These restoration costs would be immense in the later stages and could massively exceed the bond/guarantor sum of £15 Million agreed between MTCBC, the Miller Group, and the Argent Group.

- d. Recent events in Scotland have illustrated these financial shortfalls when Scottish Coal, and ATH resources collapsed leaving the restoration of their opencast mines to the public purse. The administrator has found somewhere around £28 Million in bonds to restore the work, but the shortfall for this restoration ^[6] is now [exceeding £200 Million](#) and is increasing as more detailed analysis is performed. Along with the recent demise of Aberpergwm in the Neath valley, and the deep mines run by UK coal in the North of England then the thought of a mining company going bust is a very tangible one and should be treated as a serious possibility. If you also take into account the current volatility of the global coal market caused by overproduction coming primarily from a run down of the use of coal and the switchover to gas from 'fracking' then it makes the scenario of insolvency a far greater possibility.

Could you please supply us with answers to our concerns above?

Local residents have contacted us with concerns about the height of the backfill/restoration work next to the Incline Side houses. Apparently, the work has achieved a height far in excess of that expected from original consultations with the mining company.

Could you also please supply us with a copy of the detailed plans for the restoration work that has been carried out in the corner of the site facing the A4060 roundabout?

We are very worried about the restoration bond not being enough to restore the site if the operation were to collapse. The financial impact on the local authority, and hence its residents could be huge. I urge you to look at this scenario and review the strategy of work versus the original strategy that the £15 million restoration costs estimate was based upon. Figures from Scotland for mines smaller than Ffos-y-fran have much higher restoration cost estimates against them than £15 million. You have the [opportunity to react now](#) ^[7] and put safeguards in place to limit the impact

⁶ <http://www.heraldscotland.com/news/environment/councils-left-with-200m-shortfall-in-funds-to-clean-up-opencast-mines.22898637> - Councils left with £200m shortfall in funds to clean up opencast mines

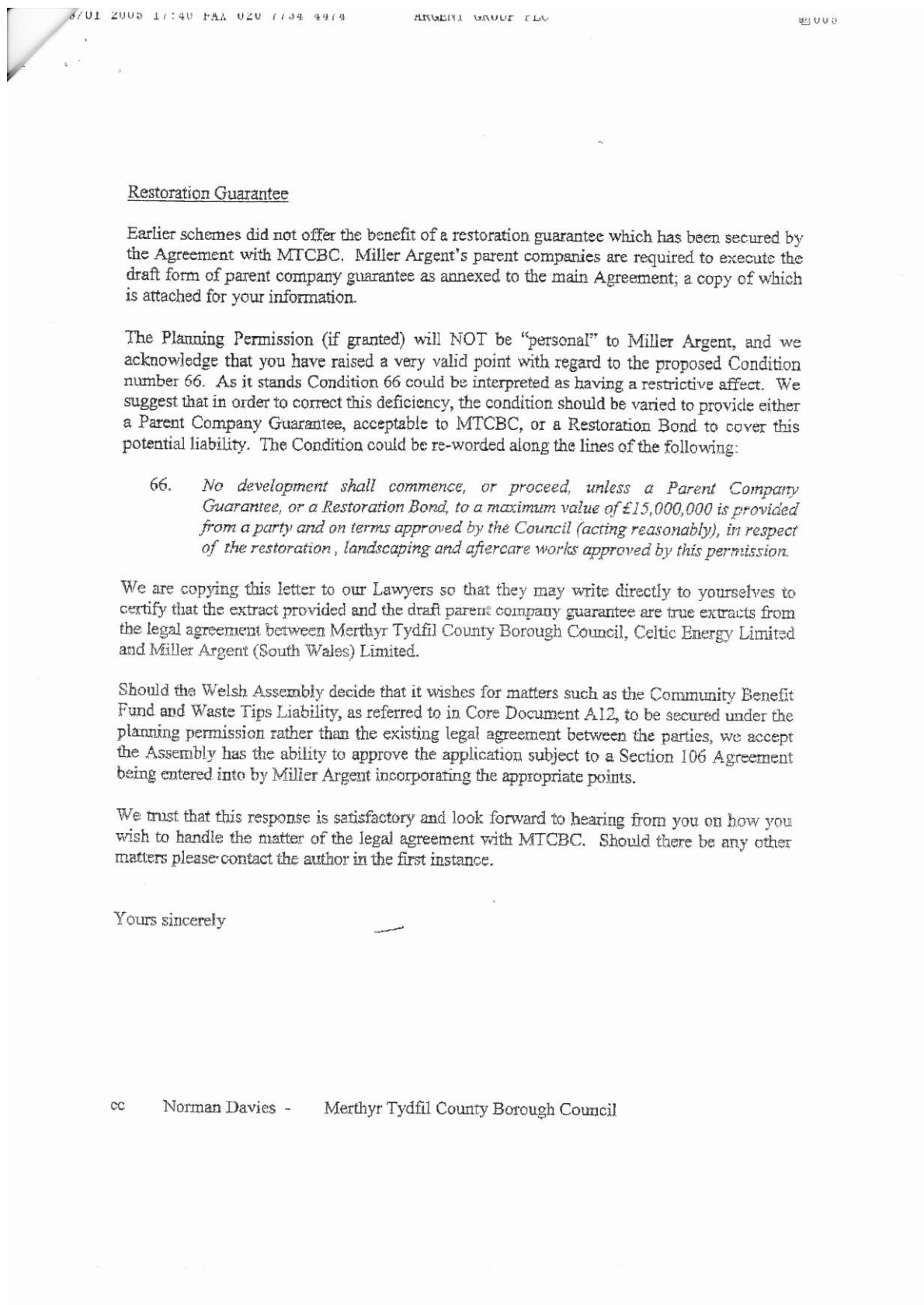
⁷ <http://www.heraldscotland.com/news/environment/councils-paying-the-price-of-ignoring-clean-up-costs-in-opencast-mining.22956605> - Councils paying the price of ignoring clean-up costs in opencast mining

of shortfalls if the worse were to happen and we think that it would be prudent that you seize that opportunity.

Chris and Alyson Austin

Thursday **17th April 2014**

External (to MTCBC) communiqués regarding Ffos-y-fran Restoration:



Restoration Guarantee

Earlier schemes did not offer the benefit of a restoration guarantee which has been secured by the Agreement with MTCBC. Miller Argent's parent companies are required to execute the draft form of parent company guarantee as annexed to the main Agreement; a copy of which is attached for your information.

The Planning Permission (if granted) will NOT be "personal" to Miller Argent, and we acknowledge that you have raised a very valid point with regard to the proposed Condition number 66. As it stands Condition 66 could be interpreted as having a restrictive affect. We suggest that in order to correct this deficiency, the condition should be varied to provide either a Parent Company Guarantee, acceptable to MTCBC, or a Restoration Bond to cover this potential liability. The Condition could be re-worded along the lines of the following:

66. *No development shall commence, or proceed, unless a Parent Company Guarantee, or a Restoration Bond, to a maximum value of £15,000,000 is provided from a party and on terms approved by the Council (acting reasonably), in respect of the restoration, landscaping and aftercare works approved by this permission.*

We are copying this letter to our Lawyers so that they may write directly to yourselves to certify that the extract provided and the draft parent company guarantee are true extracts from the legal agreement between Merthyr Tydfil County Borough Council, Celtic Energy Limited and Miller Argent (South Wales) Limited.

Should the Welsh Assembly decide that it wishes for matters such as the Community Benefit Fund and Waste Tips Liability, as referred to in Core Document A12, to be secured under the planning permission rather than the existing legal agreement between the parties, we accept the Assembly has the ability to approve the application subject to a Section 106 Agreement being entered into by Miller Argent incorporating the appropriate points.

We trust that this response is satisfactory and look forward to hearing from you on how you wish to handle the matter of the legal agreement with MTCBC. Should there be any other matters please contact the author in the first instance.

Yours sincerely

cc Norman Davies - Merthyr Tydfil County Borough Council

HUW LEWIS AM

Labour & Co-operative, Merthyr Tydfil & Rhymney
National Assembly for Wales
Venture Wales Building
Pentrebach
Merthyr Tydfil
CF4B 4DR

Mr. James N. Davies

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our Ref: MTR/01 160026

Telephone: [REDACTED]

Web: nuwlewis.org.uk

Twitter [REDACTED]

Email. [REDACTED]

Cenedlaethol Assembly for Cymru Wales

From the Office Manager

Dear Jim,

We have received this letter today from the council's chief executive, Mr. Gareth Chapman, following our representations on your behalf, and I enclose a copy for your information.

Mr. Chapman confirms that the £15 million surety in respect of the Ffos Y Fran site remains in place. The council has also secured that **by January 2022, a cash deposit of £15 million will also be available for restoration costs.** *[Chris Austin - EDIT - there has been no talk of the further £15 Million since then - we are chasing it, but don't expect them to answer or be open about it]*

I very much hope that this reply provides some reassurance. As always, should you feel that Huw or I could be of any future assistance, please do not hesitate to get in touch.

Christopher Binding

Office Manager, Office of HUW LEWIS AM
Assembly Member, Merthyr Tydfil & Rhymney

Please note: Huw Lewis AM will not be seeking re-election to the National Assembly for Wales in May. His term of office ends on 6 April and you should keep copies of all correspondence for your files. After this time, all files held by Mr. Lewis will be securely destroyed in line with data protection guidelines.

Adran Cyfoeth Naturiol
Department for Natural Resources

To: David Cross, MTCBC LPA
From: Chris Austin
Date: 24 April 2024

David,

I have been going through our old emails and documentation around what was put in place as the restoration 'bond' when the Ffos y fran operation was sold to Gwent Investments (as was).

I am confused by statements that I received from Gareth Chapman and Huw Lewis at that time and was hoping that you could clarify them for me.

This excerpt from a statement by Chris Binding for Huw Lewis, AM:

Mr. Chapman confirms that the £15 million surety in respect of the Ffos Y Fran site remains in place.

The council has also secured that by January 2022, a cash deposit of £15 million will also be available for restoration costs.

I have a hard copy communiqué from Mr Chapman stating the same, which I can locate and supply.

The £15 million surety is mentioned as a separate item from the cash deposit, but we only know of the one £15 Million. Sorry, confused, as always.

We know about the surety in the escrow account, but could you explain what is the other £15 Million? If there were an extra £15 Million then that would solve a lot of the issues up at the mine.

Many thanks in advance,

Chris Austin

Llywodraeth Cymru
Welsh Government
Eich cyfNour ref
Ein cyf/Our ref TO/CS/00136 116

Chris Austin
[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr Austin

Thank you for your letter regarding Miller Argent Limited. You pose a number of questions regarding the possible transfer of company ownership by Miller Argent and the implications for their operation at Ffos-y-fran. The Minister has asked that I reply to you on his behalf.

Whilst I am able to address some of the issues you raise I am not able to comment fully, either because we do not have full information available to us or because it would not be appropriate to make a comment.

I can confirm from the planning perspective that Welsh Government has not met the operator. This is something that is more properly a matter for the local planning authority to undertake in the context of its site monitoring role. Merthyr Tydfil CBC would be in a better position to know about the future intentions of the company as they deal with them on a regular basis and we do not generally interfere in matters that are related to day to day planning control. We do not, therefore, have any specific knowledge about the transaction that appears to have occurred, although it does not appear to involve a transfer of ownership. We have not been told anything directly by the company.

In terms of restoration, the local planning authority would be responsible for controlling and enforcing the terms and conditions of any Section 106 agreement. I do not have any information on the section 106 agreement so these questions would be best asked of the Council. Finally, I can confirm that as a matter of principle planning permission is registered with the land (the site) and so any existing constraints, such as operating hours, would still apply should a transfer of land to another company take place.

I understand the concerns you raise and recognise that this response is very general. I hope you will understand why I can only respond in such a general way.

Yours sincerely
Joanne Smith
Planning Directorate

**Gwent Investments capital statement to Companies House in AR01 for
13/03/2016**

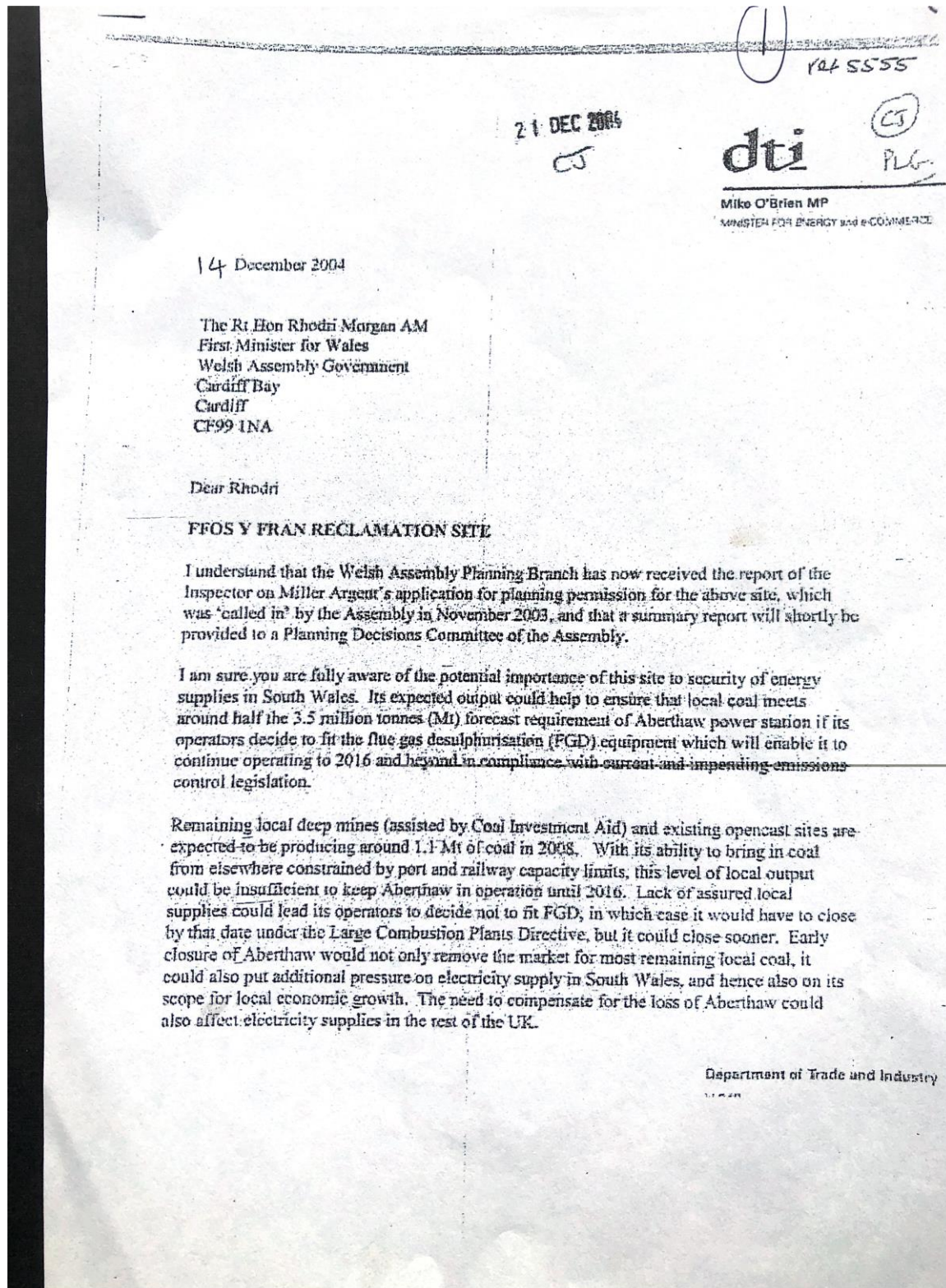
Statement of Capital (Share Capital)

Class of shares	ORDINARY	<i>Number allotted</i>	1800001
		<i>Aggregate nominal value</i>	1800001
<i>Currency</i>	GBP	<i>Amount paid per share</i>	1
		<i>Amount unpaid per share</i>	0
<i>Prescribed particulars</i>			
FULL VOTING RIGHTS			

Statement of Capital (Totals)

<i>Currency</i>	GBP	<i>Total number of shares</i>	1800001
		<i>Total aggregate nominal value</i>	1800001

The decision wasn't really being driven by 'Reclamation' was it? The impetus and urgency is all about getting at the coal. No real concerns about the impact on residents or the safe reclamation of a dangerous and derelict site...just the coal and keeping the lights on; which wouldn't really have been at risk with cheap and plentiful supplies of coal already being imported from safe and secure countries.



Julie James AS/MS

**Ysgrifennydd y Cabinet dros Lywodraeth Leol, Tai a Chynllunio Cabinet
Secretary for Housing, Local Government and Planning**

Bae Caerdydd • Cardiff Bay Caerdydd • Cardiff CF99 1SN Canolfan Cyswllt Cyntaf / First Point of Contact Centre: 0300 0604400 Gohebiaeth.Julie.James@llyw.cymru Correspondence.Julie.James@gov.Wales Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Eich cyf/Your ref DB4329

Ein cyf/Our ref JJ/00550/24

Dawn Bowden MS

Member of the Senedd for Merthyr Tydfil & Rhymney

Dawn.Bowden@senedd.wales

18 April 2024

Dear Dawn,

Thank you for your email of 12 March regarding action in relation to water levels at the Ffos y Fran site.

Welsh Government continues to closely monitor the situation at the site and our priority remains ensuring the safety of the local community. We remain in regular contact with Merthyr Tydfil County Borough Council and a range of public sector partners including Natural Resources Wales (NRW).

The Council and NRW continue to monitor the site to fulfil their respective regulatory roles. While NRW are responsible for permits relating to water discharge from the site, responsibility in respect to flood risk lies with the Council as the Lead Local Flood Authority. The leader of the Council has assured Ministers that the water level in the void is not an immediate concern, and Welsh Government is providing support to the Council to ensure that it is able to access independent assessments on potential flooding concerns and environmental impacts.

The safeguarding and restoration of the site remains our immediate objective, alongside our wish to see full restoration of the site in line with the planning permission granted.

Yours sincerely,

Julie James AS/MS

Ysgrifennydd y Cabinet dros Lywodraeth Leol, Tai a Chynllunio
Cabinet Secretary for Housing, Local Government and Planning

Communiqués between Ourselves and the Coal Authority

Paul Frammingham, Chief Finance and Information Officer, the Coal Authority

Dear Paul,

thank you for your prompt reply to our letter of concern re: Ffos-y-fran mining void filling with water, but I do have to come back on your assertions.

There are three major points that you made that I'm afraid that I do have to challenge.

1. You say, (on behalf of the Coal Authority - 'CA'), that '*...the site has ceased coaling so we have very limited powers or involvement with the site other than ensuring that the remaining lease and licence conditions are met*'. I would think, and it appears to be supported by statements in the Coal Industry Act 1994 ('the Act'), that your responsibility for coal mines goes beyond their working life. Collapsed historic coal mines and flooded coal workings occur well after the coal extraction phase of the mine has passed. In the case of Ffos-y-fran, the mining company, Merthyr (South Wales) Ltd. (MSW) were working in the mining void right up to the cessation of coal extraction, and therefore the void needed to be dry. The pumps could only be turned off after coal extraction works were completed and I would think that this is the most common circumstance with coal mines.

The Act states that: '

Coal Industry Act 1994 - UK Public General Acts 1994 c. 21 Part I **The Coal Authority**

Section 4A

(1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into any controlled waters.

(2) In this section and sections 4B [F2, 4C and 4CA] below—

(a) "controlled waters" has the meaning given by section 104 of the Water Resources Act 1991; and

(b) references to coal mines are to **coal mines vested in the Authority**.

To me, that doesn't carry a caveat of 'working coal mine' nor an exclusion clause of 'coal mines post the coal extraction phase'. The mine is still licensed by yourselves (CA), it will become a historic coal mine from this point forward, but work is to continue on its final restoration at a later date. Operations in this mine are ongoing and will need to be monitored and

regulated by all 'interested' public agencies, commensurate with their responsibilities in this case; the CA included.

In the second instance you say '

2. *'With regards to the sections, you have quoted from the Coal Industry Act 1994 these responsibilities pass to the operator when a lease and licence is in place. Water management and site safety is therefore the responsibility of the operator with oversight from the environmental regulator and the local authority'*. What we have been exploring, and have put to you, is the enforcement action available to the Coal Authority, not the responsibilities of the mine owner/operator. Enforcement action cannot be passed on to the person contravening their responsibilities. They may be responsible for controlling any water discharge from their mine, but if they fail to do so the responsibility then falls to the CA to enforce those responsibilities, or even take control of the situation.

In addition, you go on to say: '

3. *'Following the closure of a surface mine the restoration and associated public safety is a matter for the landowner and local authority'*. The Local Planning Authority (LPA), Natural Resources Wales (NRW) and the Health and Safety Executive (HSE) do all have a measure of responsibility in this instance, commensurate with their responsibilities, but you cannot abrogate, or reassign the responsibilities of the Coal Authority stated within the Act. You may, and probably do, work alongside these other agencies to provide a common solution, but surely, the ultimate responsibilities of the Act lay with you (the CA).

The preamble to the Act says:

1. Background

This statement sets out the functions carried out by the Coal Authority that are within our public task under the Re-use of Public Sector Information Regulations 2015.

It is published primarily to provide clarity to re-users and potential re-users of our information.

This statement is regularly reviewed and is due to be considered again no later than 2024.

2. Public task

The Coal Authority owns the vast majority of un-worked coal in Great Britain, as well as **former coal mines**.

We are a non-departmental public body sponsored by the [Department for Energy Security and Net Zero](#) and established by Parliament under **the Coal Industry Act 1994, which sets out our relevant powers and responsibilities**.

These include:

- licensing coal mining operations
- matters with respect to coal mining subsidence damage outside the areas of responsibility of coal mining licensees
- dealing with property and historical liability issues, for example environmental projects, **mine water treatment schemes and surface hazards relating to past coal mining**

- providing public access to information held by us on coal mining

To us, this does appear to point to there being no 'end date' to your responsibility for a coal mine and any deleterious impact caused by it now, or in the future.

Your (the CA's) website goes on to state:

Report a coal mine hazard

Report a problem with a coal mine to the Coal Authority.

The Coal Authority

0800 288 4242

Open 24 hours a day, 7 days a week

Problems could include:

- a collapsed mine or mine entrance
- **gas or water emissions from an abandoned mine**
- an entrance to an abandoned mine that's not sealed
- a ground collapse, for example a hole in the ground ('sinkhole')

I am a layman in this field but the Act does appear to be quite clear on the responsibilities for enforcement in the management of water issues associated with coal mines, current and historic, in the UK.

We are extremely concerned about the impact of this 'abandoned' mining void and what the flooding of the void with water will cause to us living within its sphere of influence. We are worried about; a catastrophic failure of the retaining walls, loose embankment sections collapsing into the void and causing 'overtopping' of the lowest bank, leachate from the surrounding strata and anything remaining in the abandoned void getting into our water supply and watercourses, the impact on the water table, and the strain that it could put on our already tested water courses and drains in the area, especially with the impacts of climate change now being felt.

We believe strongly that the drainage pumps need to be reinstated as soon as possible to drain the void and, at the very least, allow for an independent survey of the void for its ability to safely hold millions of gallons of water for the foreseeable future, or even in perpetuity. Our ideal would be that the mining void be backfilled to preclude any safety issues of this sort, but that is an issue that we are discussing alongside this.

Could we please ask you to revisit our previous request and review the CA's responsibilities in the light of our assertions above? This is a time critical issue so could we please ask for a response as a matter of urgency?

If your understanding of the Act differs from ours, could you please point us towards the relevant declarations in the Act or in any other relative government

documentation that supports your position. Could you also explain your (the CA's) interpretation of these declarations? If enforcement law differs in Wales to that of the rest of the country, could you please explain where and how?

Yours sincerely,

Chris and Alyson Austin
Residents - Merthyr Tydfil - Thursday 4th April 2024

From: Customer Service [mailto:customerservice@coal.gov.uk]
Sent: Tuesday, April 2, 2024 2:23 PM
To: Chris Austin
Subject: RE: [External] Ffos y fran Water Filled Mining Void

Dear Chris & Alyson

Thank you for your email regarding the water collecting at Ffos y Fran.

I've attached a response from Paul Frammingham, Chief Finance and Information Officer.

Kind regards

Rachel

Rachel Nicholls
Customer Correspondence Officer

E : customerservice@coal.gov.uk
T : 01623 637000
W : gov.uk/coalauthority

200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG

From: Chris Austin [REDACTED]
Sent: 18 March 2024 18:28
To: Customer Service <customerservice@coal.gov.uk>
Cc: [REDACTED]
Subject: [External] Ffos y fran Water Filled Mining Void

Sir/Madam,

my wife and I are resident in Merthyr Tydfil, next to the Ffos-y-fran opencast coalmine/Land Reclamation scheme. We are surrounded by heavily populated residential areas. The mine sits at an elevation of about 1,000 Ft above sea level and looms over Merthyr Town.

We have been working with the Merthyr Tydfil County Borough Council (MTCBC) Local Planning Authority (LPA) to try and ensure the full and final restoration of the Ffos-y-fran coalmine, as the mining company, Merthyr (South Wales) Limited (MSW), are contractually obligated to complete. They ratified their purchase of the mine, complete with its obligation to fully restore the site in late 2015.

It was brought to our attention on Sunday 10th March (2024) that the mining void was filling with water. In evidence of this we were supplied with drone footage and still photographs.

The void is not visible from any vantage point now, so we have no information as to when it started to fill. We have been informed since that the mining company has turned-off the drainage pumps and has stated that it has no intention of turning them back on.

The mining void has not been surveyed by civil engineers, hydrologist, nor hydro-geologists for the purpose of containing a large body of water.

We have pressed the MTCBC LPA for prompt action, but it appears that they are content with awaiting further action by the mining company. This would be in the form of a survey, but the lower section of the mine is now flooded, so we are unconvinced that this can happen, and to await an amended restoration plan that would now not be presented until the Autumn (2024) at the earliest.

By next Autumn, the void will, most likely, be full of water and would present no opportunity for survey nor restoration. Depending on the weather conditions, and the previous year, or two has been extremely wet up here, the mine could very well be full and possibly overtopping the retaining wall facing the A4060 Slip Road/dual-carriageway, or could have broken through a weak point prior to that.

We have reviewed the Coal Industry Act 1994 and it appears that you, The Coal Authority, have the responsibility for these issues and the power of enforcement.

We are asking that you step in now, as a matter of urgency, to prevent this transgression becoming a tragedy.

The drainage pumps need to be reinstated to ensure that the mine doesn't fill to a point of no return, (where it fills beyond a level that precludes any remediation). Once drained then we ask that you perform an independent survey of the mining void for its ability to safely hold millions of gallons of water, in perpetuity.

We want the full and final restoration of the mine, as promised to us, and as defined in the current planning consent, but this is currently being denied us by the mining company's pre-emptive actions along with the safety issues that could result from that action. We need to reinstate the draining of the void and launch independent safety checks with urgency.

Could you please get back to us as soon as possible and inform us of how you plan to deal with this issue.

Chris and Alyson Austin
Residents - Merthyr Tydfil
Monday 18th March 2024

Appendix A

I've taken the opportunity to cut out a few relevant snippets from the Coal Industry Act 1994.

Coal Industry Act 1994

UK Public General Acts 1994 c. 21 Part I The Coal Authority Section 4A

(1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into any controlled waters.

(2) In this section and sections 4B [F2 , 4C and 4CA] below—

(a) “controlled waters” has the meaning given by section 104 of the Water Resources Act 1991; and

(b) references to coal mines are to coal mines vested in the Authority.]

4B Coal mine water discharge: powers of entry

(1) If the Authority is of the opinion that a discharge of water from a coal mine into or on to any land or into any controlled waters has caused, is causing or is likely to cause—

(a) serious pollution of the environment; or

(b) danger to life or health,

the Authority may, for any purpose specified in subsection (2) below, in writing authorise a person to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (3) below.

(2) The purposes are—

(a) to determine the extent of the pollution or of the danger, or the likelihood of serious pollution or such danger;

(b) to determine whether, and, if so, how, the Authority should exercise its power under section 4A above;

(c) to take action under that section.

(3) The powers are—

(a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, using reasonable force) any premises which the authorised person has reason to believe it is necessary for him to enter;

(b) to use a vehicle or a boat to do so;

(c) on entering any premises by virtue of paragraph (a) above, to take with him—

(i) any other person authorised by the Authority and, if the authorised person reasonably believes he is likely to be obstructed, a constable; and

(ii) any equipment or materials needed for any purpose for which the power of entry is being exercised;

(d) to make such examination and investigation as may in any circumstances be necessary;

(e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above;

(f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air or water or land in, on, or in the vicinity of, the premises;

(g) to require any person to give him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section.

(4) The powers which are conferred in relation to any land by this section include power, for the purposes mentioned in subsection (2) above—

(a) to carry out experimental borings or other works on those premises; and

(b) to install, keep or maintain monitoring and other apparatus there.

(5) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected—

(a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and

(b) either—

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 1A to this Act.

(6) Except in an emergency, where an authorised person proposes to enter any premises and—

(a) entry has been refused and he reasonably believes that the use of force may be necessary to effect entry; or

(b) he reasonably believes that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this section shall be effected only under the authority of a warrant by virtue of Schedule 1A to this Act.

(7) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (3) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911).

(8) Schedule 1A to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.

(9) In this section, “premises” includes any land, vehicle or vessel, and any plant which is designed to move or be moved (whether or not on roads).]

4C Coal mine water discharge: compulsory purchase of land

(1) The Authority may be authorised by the Secretary of State to purchase **compulsorily any land** anywhere in England and Wales where he is of the opinion that—

(a) the purchase is required by the Authority **for the purpose of preventing, or mitigating the effect of, a discharge of water from a coal mine**; and

(b) the discharge has caused, is causing or is likely to cause significant pollution of controlled waters or serious harm to human health.

(2) The power of the Secretary of State under subsection (1) above shall include power—

(a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and

(b) by authorising the acquisition by the Authority of any rights over land which is to be or has been acquired by the Authority, to provide for the extinguishment of those rights.

(3) Without prejudice to the generality of subsection (1) above, the land which the Authority may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.

(4) The Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Authority; and Schedule 3 to that Act shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.

(5) Schedule 1B to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the Compulsory Purchase Act 1965 in their

application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.

4CA Further powers relating to subsidence and water discharge

(1) The Authority may take such action as it considers appropriate (if any)—

(a) with respect to subsidence arising otherwise than in connection with coal-mining;

(b) for the purpose of preventing, or mitigating the effect of, the discharge of water other than from a coal mine into or on to any land or into any controlled waters.

(2) The powers conferred on the Authority by subsection (1) do not affect any other function of the Authority.

Response sent via email: [REDACTED]

17 April 2024

Dear Chris and Alyson

Thank you for contacting us on 4 April to ask further questions about the water collecting in the void at Ffos-y-Fran. We do appreciate your concerns and I apologise if my previous response was not clear regarding our responsibilities.

In your latest email, you refer to sections of the Coal Industry Act 1994 to demonstrate our responsibilities including section 4A (2) which states that these sections only apply to coal mines vested in (owned by) the Coal Authority. In our previous response we explained that we transferred ownership of this mine from the Coal Authority via the lease we granted to the Operator in 1998. This ownership does not revert to us when the Operator ceases to extract coal at the site.

Our enforcement powers would only apply to a circumstance where an Operator was breaching the terms of their licence. For surface mines, local authorities are the primary authority for their regulation, through planning permission and enforcement through the planning regime. Following the closure of a surface mine, managing the restoration and associated public safety is a matter for the landowner and local authority.

We will of course continue to provide advice to Merthyr Tydfil County Borough Council, Welsh Government and other partners as needed.

We recommend you continue to speak to Merthyr Tydfil County Borough Council about your concerns.

I hope my response has clarified the points you raised.

Yours sincerely, Paul Frammingham, Chief Finance and Information Officer, Coal Authority

Response sent via email: [REDACTED]

2 April 2024

Dear Chris and Alyson

Thank you for contacting us on *22 March 2024* to share your concerns about the water collecting in the void at Ffos-y-Fran. We understand your concerns and would advise that you continue to speak about them with Merthyr Tydfil County Borough Council, as the lead authority for the site. You may also wish to speak with [Natural Resources Wales \(NRW\)](#) who have responsibilities and oversight for water management.

For background, policy for coal mining in Great Britain is set by the UK, Scottish and Welsh Governments through planning policy and the UK and Welsh Governments through coal licensing policy and legislation.

Local authorities are the lead authority for their oversight and regulation through planning permission and enforcement through the planning regime. To operate surface mine operators also require a coal mining licence from the Coal Authority and other relevant approvals from bodies such as Natural Resources Wales and the Health and Safety Executive. Ffos-y-Fran surface mine has a current coal mining licence but the site has ceased coaling so we have very limited powers or involvement with the site other than ensuring that the remaining lease and licence conditions are met.

With regards to the sections, you have quoted from the Coal Industry Act 1994 these responsibilities pass to the operator when a lease and licence is in place. Water management and site safety is therefore the responsibility of the operator with oversight from the environmental regulator and the local authority.

Following the closure of a surface mine the restoration and associated public safety is a matter for the landowner and local authority. We know that the council and NRW are aware that the ground water in the void is returning to its natural level and that the council and operator are in discussions about site restoration.

We continue to offer advice to the council and to Welsh Government as a partner body with knowledge and expertise in this area.

Yours sincerely

Paul Frammingham
Chief Finance and Information Officer

Communiqués between Ourselves and National Resources Wales (NRW)

Sioned - 23 April 2024

Hello

We have now received the below response from one of our teams;

"Water sampling & quality: at this time, we are not undertaking water samples from within the void. The operator, MSW(Ltd), do have permits in place, including regarding discharge of water (effluents). Previous to the pumps being switched off, the water would've have been pumped and discharged via the agreed discharge points from the site. The monitoring requirements for the operation are outlined in the permits, which require the operator to monitor for suspended solids, pH, iron and visible oil and grease from their discharge points. As such we've had no concerns regarding permitted discharges over the last year and we've not had any water quality/pollution events logged over the past 12 months.

Ideally, we would like to see MSW(Ltd) take up our suggestion around wider water quality monitoring in and around their operation, which would be outside the requirements of a NRW permit but it would help support wider discussions on remediation and address concerns circulating in the public domain around the water quality.

Filling of the void: as described previously, the void does not fall under the Reservoirs Act 1975 so at this time it does not fall under our remit. However, we continue to work closely with other bodies regarding water management and other aspects related to site operation and remediation plans. The operator still remains active on site therefore the site has not been abandoned, as suggested"

Kind regards

Sioned Wyn-Evans

Cymorth Cyswllt Cyfoeth / Customer Hub Support
Cwsmer, Cyfathrebu a Masnach/ Customer, Communications and Commercial
Cyfoeth Naturiol Cymru/Natural Resources Wales

Ebost: [REDACTED]

Siaradwr Cymraeg

April 23, 2024

Sioned,

are you now in a position to give me a response to the queries I raised below? A situation report would suffice, for now.

We are concerned, and dealing with the issue is time critical, so we need to be progressing our response to this issue.

Just a quick scan of the pollution/contamination issues raise concerns about Iron Pyrites and its oxidation to Sulphuric Acid (the mining void has been open to the atmosphere for several years), the heavy metal issue, and we believe that Nickel, Zinc and Iron are quite prevalent in coal seams, hydrocarbons, and the high Sulphur coal itself leaching Sulphur and its compounds into the water. The Sulphuric Acid, despite being a dangerous substance in itself, will accelerate the leaching of metals into the water.

Many thanks,

Chris Austin

April 11, 2024

Sioned,

could you please provide me with an update on where we are with our request?

Further to this, it has been reported to us that the Local Planning Authority and the mining company, Merthyr (South Wales) ltd. have both asserted (this week) that the water level in the void is falling. I haven't been able to corroborate the statement myself, so we will have to take their statement as fact.

The drainage pumps haven't been reinstated so this raises further concerns. The weather here has been awful and rainfall has been greater than average for many months. This should have resulted in the flooding of the mining void with water accelerating, and visually with waterfalls cascading into the void this is so, but the opposite appears to be the case. It now begs the question, where is the water going?

If the water contains toxins from the surrounding strata, and possibly from material abandoned in the void after mining activities ceased, any water leaking out of the void would be carrying this contaminated water out into the locale.

It urgently needs to be determined where this large quantity of water is leaking out to. It could be the local watercourses, where the questions are; could it overwhelm those watercourses, and is it then making its way from there into the River Taff? In addition, whether it could be polluting the water table and the detrimental consequences of that have to be considered.

Could you please investigate the LPA's claims and chase where the water is escaping to, alongside my original request?

Yours sincerely,

Chris Austin

From: Chris Austin [mailto: [REDACTED]]
Sent: Thursday, April 4, 2024 4:51 PM
To: 'Chris Austin'; 'Enquiries'
Subject: RE: RE: Ffos y fran Mining Void Water Filled NRW:02692144

Sioned,

the water in the flooding mining void has a colour to it that we wouldn't expect to see considering the composition of the container. It carries a milky green-blue hue.

We thought that this was just the colour of the sky reflecting in the water, but we've had video footage taken in different weather conditions and the colour does appear to carry through.

One of our serious concerns about a water filled void is the leaching of toxins from the surrounding strata and anything abandoned in the mine when the mining company abandoned it, along with anything that was contained in the infill.

Are you taking samples of the water content and analysing it for toxins?

With this mine not being surveyed for it being safe to contain millions of gallons of water, and therefore whether it is 'water tight' so to speak, we are very concerned that any toxins would leak out into the watercourses and even more worryingly, into the water table.

Could you please let us know what you are doing to ensure the safety of the water supply and water courses within the sphere of influence of this mine?

With the very wet weather conditions that we've been experiencing recently, and with the increasing impact of climate change, the void is filling at an alarming rate. Are you working on a solution for this void filling with water as we could soon find ourselves with it achieving a depth that will overtop the forward edge of the mine. This would carry any polluted water out into the surrounding environment in large quantities. Also, we fear that it will overwhelm the already stretched drainage system in the locale causing property damage along the way and eventually reach the River Taf.

Could you please let us know if this falls under your remit and what you are planning to do to alleviate the issue?

Yours sincerely,

Chris and Alyson Austin

From: Chris Austin [mailto: [REDACTED]]
Sent: Wednesday, April 3, 2024 10:36 AM
To: 'Enquiries'
Subject: RE: RE: Ffos y fran Mining Void Water Filled NRW:02692144

Sioned,

many thanks for this detailed response, it is very much appreciated.

Obviously, we are very disappointed that the Act excludes structures such as our flooded mining void as we feel that the act should encompass ensuring that we have a safe structure to contain a large body of water.

However, we will not be able to change the act, certainly not in the time allotted, and we understand that you are unconditionally constrained by the wording within, so we will have to

find another avenue to have this mine surveyed independently to give the local populace the reassurance that it deserves.

We are pleased that you are still working with the LA as we have further concerns with a flooded void that we will discuss with you at a later date.

Chris Austin

From: Enquiries [mailto:enquiries@cyfoethnaturiolcymru.gov.uk]
Sent: Thursday, **March 28**, 2024 10:54 AM
To: Chris Austin
Subject: FW: RE: Ffos y fran Mining Void Water Filled NRW:02692144

Hello

Thank you for your email.

Please find attached a response from one of our teams for your attention.

Kind regards

Sioned Wyn-Evans

Cymorth Cyswllt Cyfoeth / Customer Hub Support

Dear Mr and Mrs Austin

Thank you for your email and enquiry regarding Ffos-y-Fran opencast mine and the application of the Reservoirs Act 1975.

You have shown diligence in your work with MTCBC and in your reading of the law, and we hope the explanations below allow you to understand why we do not consider the Reservoirs Act to apply to the Ffos-y-Fran void.

The Reservoirs Act 1975 (the 1975 Act), and its predecessor law, the Reservoir (Safety Provisions) Act 1930, were brought into force to protect against an uncontrolled release of water from large raised reservoirs. The term “raised” is important because it means there must be some form of structure to hold water above ground level. The void has been purposefully excavated below natural ground level and we are not aware of any dam which retains water in the Ffos-y-Fran void, other than the exposed, but natural, rock faces.

On the matter of the void, we provide the following advice which in summary is that in its current state, even though it may fill with water, the void does not form a large raised reservoir within the meaning given by the 1975 Act. There are some very limited, pre-planned circumstances which could result in a large raised reservoir being formed, but simple filling of the void is not one of them. We hope the drawings help to convey the principles to you.

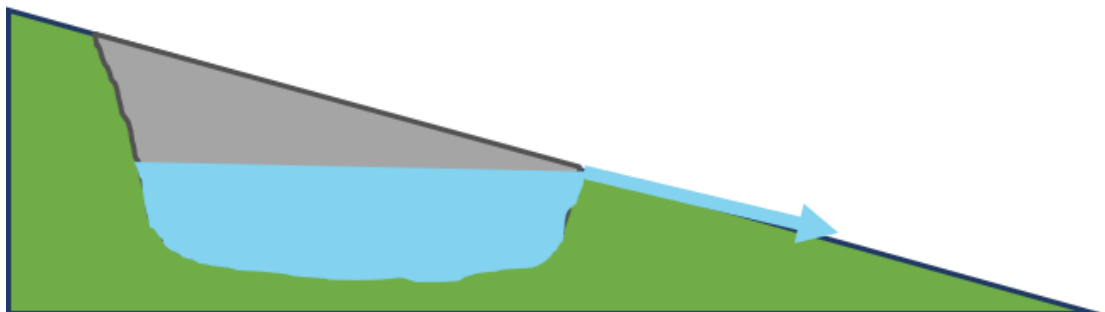
Reservoirs Act 1975 Section A1

- A *large raised reservoir* is a structure designed or used for collecting and storing water, and a large, raised lake or other area capable of storing water which was created or enlarged by artificial means,
- A structure or area is “raised” if it is capable of holding water above the natural level of any part of the surrounding land.
- A raised structure or area is “large” if it is capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.

Both definitions in RA75 section A1(1) require a reservoir to be “raised” so that water is held above the natural level of any part of the surrounding land.

The void at Ffos-y-Fran is an “*area created by artificial means*” but is not designed or used for collecting and storing water. In fact, the opposite is true – it’s desirable that water is pumped away from the void to prevent storage and a cessation of pumping should not infer a “use”. For clarity, we do not consider other dictionary definitions of reservoir because it is defined within the law for a specific purpose.

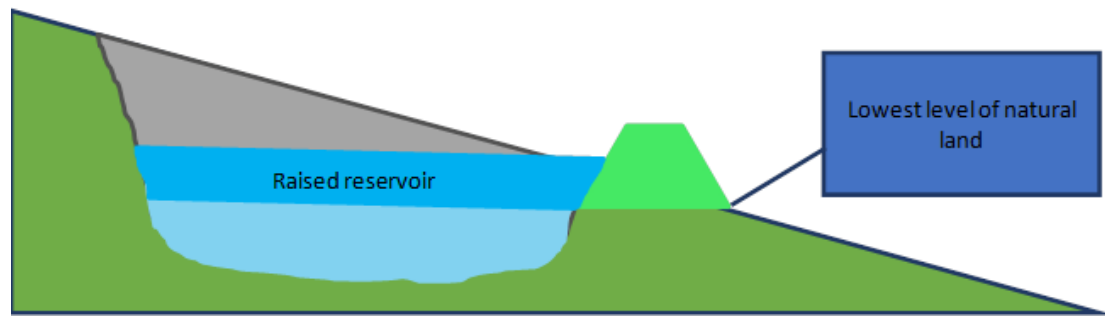
We do not dispute that the capacity is “large” as it is clearly above 10,000 cubic metres but it is not “raised above the natural level of any part of the surrounding land” (being that which is “*remaining after the construction or any alteration of a large raised reservoir*”). Whilst the void itself is created by artificial means, any water in the void is retained by the internal faces made of natural ground. Upon filling, the point at which water reaches the rim of the void it will overflow over the natural ground contiguous with the reservoir.



There are some circumstances that I’ve outlined below that might bring the site under the 1975 Act but these would require intended and designed intervention.

Creation of a dam or bund to prevent overspill

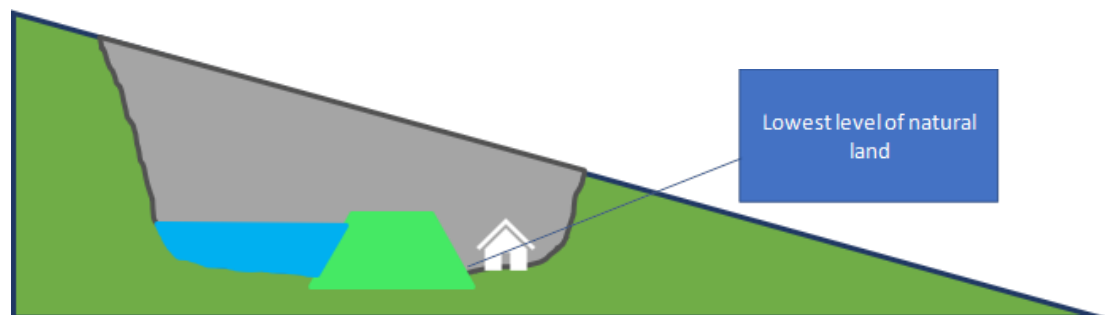
A bund or dam constructed to prevent overspill could cause storage of water above the natural level of land surrounding the newly formed reservoir. The lowest downstream toe of the bund would determine the lowest level above which capacity is measured. If the capacity is 10,000m³ or more, the 1975 Act would apply, subject to exemptions.



The Regulations specify that capacity is measured above the “toe” defined as the point on the downstream side of a structure forming part of the reservoir where its base meets the lowest natural level of any part of the surrounding land.

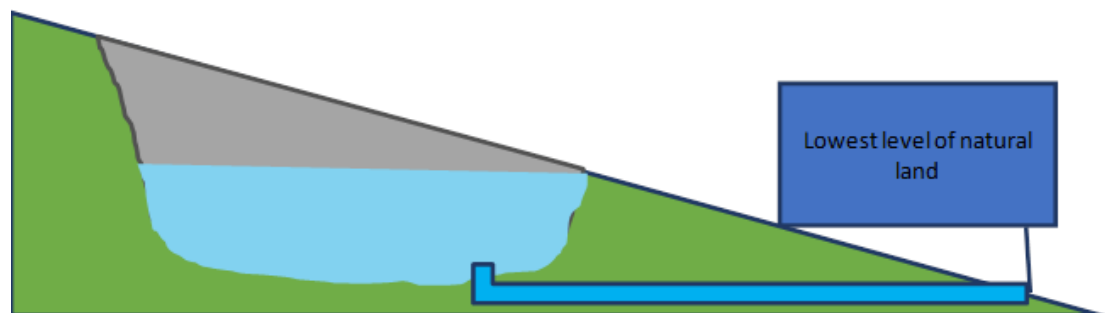
Development of the void

A raised reservoir could also be constructed within the site, perhaps as part of a development project to use the void, if this was 10,000m³ then the 1975 Act would apply, subject exemptions.



Construction of a drainage hole

Occasionally a lake may be utilised by installing an artificial drain to allow draw off. Whilst this does not raise the level of the reservoir, it redefines the lowest natural level.



Exemptions

If a large raised reservoir is created, it could be exempt from RA75 if any of these exemptions apply:

Reg 3.— Specified things not to be treated as large raised reservoirs

(1) Pursuant to section A1(8) of the 1975 Act the following things are not to be treated as large raised reservoirs for the purpose of that Act—

- (a) a mine lagoon which is a tip within the meaning of the Mines Regulations 2014
- (b) a quarry lagoon which is—
 - (i) a tip within the meaning of the Quarries Regulations 1999; or
 - (ii) a disused tip within the meaning of Part 2 of the Mines and Quarries (Tips) Act 1969;
- (c) a canal or other inland navigation;
- (d) structures designed and constructed with the primary purpose of protecting land from the sea: or
- (e) a road embankment or railway embankment except where—
 - (i) the drain or drains through it are artificially blocked for the purposes of using areas upstream to store water; or
 - (ii) the drain or drains through it are constructed so that water is stored above natural ground level.

(2) Paragraph (1)(c) does not include a reservoir which forms part of a canal or other inland navigation.

We do not dismiss your concerns, but **it would be improper and beyond our powers to regulate the void under the Reservoirs Act 1975**, when we do not consider it meets the test for being a large raised reservoir. Under our broader remit, we do however continue to work with the owner, with Merthyr Tydfil CBC and with other parties on matters associated site since mining has ceased.

The main excavated void is an area that was created or enlarged by artificial means and is capable of holding considerably more than 10,000 cubic metres of water. Within the initial revised restoration proposals submitted by RML on behalf of MSW in October 2023 it is suggested that the filling of the final void would require some 26,000,000 cubic metres of material. The revised proposals suggest partially filling the void with some 4,000,000 cubic metres of fill material. Even if not all of this volume could be occupied by water (without overtopping) it is clear that the void, which the report indicates is some 175 metres deep, could hold in excess of 10,000 cubic metres of water.

Communiqués between ourselves and MTCBC LPA

David,

the mining void is filling rapidly due to the very wet weather that we have been experiencing of late; there are waterfalls cascading down the sides of the mine into the flooded void. I urge you, (the Merthyr Tydfil County Borough Council (MTCBC) Local Planning Authority (LPA)), once again, to use the money from the escrow account to put pumps back in the mining void and clear the water before it is too late to act.

The £15 Million lodged in that account by Merthyr (South Wales) Ltd. (MSW) was secured for this very purpose; to make the mine safe in the case of the mining company failing to deliver on its contractual obligation to fully restore the mine as ratified in the legal agreement between themselves (MSW) and MTCBC dated December 22nd 2015 and measured against the 2007 planning consent. They have now clearly reneged on that legally binding contract, so the money is now available for the purpose of making the mine safe.

I have also asked for intervention from National Resources Wales (NRW) and the Coal Authority (CA) on this issue and I'm sure that they are liaising with yourselves on this.

I have informed our MP, Mr Gerald Jones of the situation at Ffos-y-fran, and our request for action, and he is monitoring progress.

As we have already discussed, the mining void has not been independently, or otherwise, surveyed to hold a large body of water and without that surety we can have no confidence in the future safety of the flooded void and under those circumstances we have to assume the worst case scenario - that it will be of dangerous construction and a threat to the health and safety of the surrounding populace. Any promise of a survey by the mining company is fatuous as the mining void is now flooded to a level that would preclude such an activity.

The responsibility for the health and safety of the local populace lies with you, the MTCBC LPA, and you have a duty of care to act promptly and effectively on this issue. We urge you to do so now.

An independent survey by civil engineers, hydrologists and hydro-geologists cannot be performed underwater in a flooded mine; the pumps have to be reinstated to clear the water to allow for this safety inspection and certification.

We are also very concerned about what is leaching into the water in the mining void as the colour is atypical of expectations. It is currently a milky blue/green colour which concerns us greatly. We'd expect there to be natural toxins leaching out of the surrounding strata, but we cannot think of anything that would turn such a large amount of water that colour.

If the water in the void is polluted with toxins, and finds its way out of the void; whether by leaching out through the strata, or overtopping the walls, then it will find its way into the local watercourses, the River Taff, and could pollute the water table.

Could you please reconsider this request for action as a matter of urgency and please inform us of your decision.

Yours sincerely,

Chris and Alyson Austin
Monday **8th April 2024**

From: Chris Austin [mailto: [REDACTED]]
Sent: Wednesday, March 13, 2024 10:31 PM
To: [REDACTED]
Cc: 'dawn.bowden@senedd.wales'; [REDACTED]
[REDACTED] 'delyth.jewell@senedd.wales'
Subject: Ffos y fran Final Restoration Costs

David,

sorry to load you up on the Ffos-y-fran issue, **but things are now happening at an accelerated rate and time is not on our side.**

The issues surrounding the final restoration of the mine and land at Ffos-y-fran all come out of the cost of the final restoration works now being unaffordable by the mining company.

I realise that I've spoken to you about this previously, but it would be remiss of me not to revisit this core issue when the situation is escalating rapidly with the drainage pumps being turned off by the mining company, and the mining void filling up with water.

I don't know whether that's an act of brinkmanship by the company, an attempt at pressurising the LPA and forcing an issue, or just disdain?! But, the standoff needs to be broken.

I've explored my understanding of the cost of final restoration issues here and I've suggested a clarification and possible resolution. I am a layman, but have taken advice from professionals. This is a high-level discussion document exploring a low cost resolution and would have to have the meat put on the bones by civil engineers.

I feel as though the final restoration issue has been driven down a cul-de-sac by the costs issue and it needs to be reversed out and redirected.

Chris Austin

Exploring a Realistic and Achievable Solution:

We are strongly of the opinion that the figures being quoted for the cost of the final restoration of the Ffos-y-fran site have been vastly overinflated.

This is of great concern to us as all the negotiation exercises that are currently being carried out between the MTCBC LPA and the mining company are being driven by this overinflated figure.

It is our opinion that the costing figures of £116 Million doing the rounds now in the public domain, and the £125 Million that the local authority and Welsh Government are using are extremely unrepresentative and unfortunately this supports the mining company's argument that they can't afford to restore the site. These costing figures have been supplied and used without supporting evidence.

Maybe this statement sounds harsh, but as it was the result of a desk exercise in the MTCBC LPA, not a detailed industry standard survey of the site and the alternatives, and as the calculations have not been made available for public scrutiny, then we are forced to follow the 'worst case scenario' line.

The Welsh Government estimated the cost of the final restoration at £50+ Million in 2014, and revised this upwards to £50-60 Million in 2018. Even these figures were being challenged by some as over the top at the time, but are a bargain compared to those being used now.

We have spoken with a recently retired civil engineer with planning and mining experience and he was aghast at the costs being used. His view was that the desk exercise must have taken the mining company's existing fuel usage figures and adjusted them upwards taking into account the rise in diesel costs and the loss of entitlement to Red Diesel after the taxation changes of April 1st 2022 to arrive at a figure like this, (though more recent usage figures would have included the loss of Red Diesel entitlement). This would be completely unrepresentative as the machinery usage profile would be completely different during final restoration operations.

During the final restoration phase there would be no further coal lorries running up and out of the mining void, and back and forth across the long haul road to the railhead/Coal Disposal Point (CDP) at Cwmbargoed. There would be no lorries bringing spoil to the void from the CDP coal washery, and none taking spoil to the spoil tips. The large Komatsu Super Shovels would be overkill for restoration operations and their massive fuel use could be avoided. There would be a saving on the cost of the expensive daily coal train as no coal will be exported from the site, along with the cost of running the coal washery, and the running of the CDP itself. Staff costs would also be much reduced as with much reduced machinery use the number of operators needed would reduce significantly.

Our adviser said that in principle the final restoration work is fundamentally just a large 'muck shifting' operation; large scale, but not taxing in engineering terms. Keeping the work simple and minimal is key to keeping the cost of final restoration low. Significantly reducing the number of machines and lorries used would attend to the key fuel usage issue.

I must say that this is in not a detailed analysis of the final restoration solution at Ffos-y-fran, but more food for thought on a minimal cost solution. I am in no way a mining engineer, but I do have common sense, and the solution mooted here is low in complexity, with low machinery usage, low fuel usage and low staffing, so doesn't appear to me to end up being anywhere near as expensive as the figures being used. I could spend a week poring over Google to refine the detail, but there are far better civil engineers and mining engineers out there that you could turn to to confirm this resolution and make it work.

He suggested that the industry standard solution for this would be to use long, and staged conveyer belts running from the spoil tips to the mining void with a couple of diggers keeping the belt full with a continuous feed of spoil (aka overburden) via a hopper and this would fill the hole up steadily, and relatively cheaply, (relative to heavy lorry usage). Bulldozers and diggers working either end of the belt would feed the diggers and distribute the spoil in the hole. Spoil moved from the spoil tips to the belt and from the belt into the void could be tipped down a chute system. The spoil removal from the high tips could be via a chute system, or possibly via a dram/bogey/rail truck solution. There would be little other machinery required other than possibly a few lorries on the spoil tip and some in the void, (although a conveyor belt in the void would further reduce lorry use), along with diggers and bulldozers to evenly distribute the spoil. I remember such long, surface conveyer belts being used for decades at Tower colliery to shift their spoil and coal, and of course, this is the solution used extensively underground for moving large volumes of coal and spoil.

There would be far fewer machines and operators needed, and the fuel costs that they claim have massively inflated the restoration cost would be kept low as there would be no longer any need for lorries driving back and forth between the railhead, mining void and spoil tips heavily laden with coal and spoil.

Along with there being a substantial amount of restoration already completed, (the void is nowhere near as deep as it was during coal extraction in there), we believe that the site could be restored for a mere fraction of the cost being bandied about.

The mining company could readily afford to do this. In fact, we believe that they could readily meet the inflated final restoration costs, let alone the revised down figure I've mooted here! With the vast profits they have made from the operation and the extra 18 months of unlawful coal extraction at very high coal sales prices, no solution discussed so far would be beyond their finances. Figures of around £200 Million taken out of the business have been reported by outside agencies such as the Good Law Project. Yet the mining company still claims poverty?

The cost of the final restoration at the time the mining company bought the Ffos-y-fran operation in late 2015 was estimated to be £50+ Million and the company didn't balk at this figure at the time and signed the contract to fully restore the mine and the land there without complaint or caveat. So, they cannot complain about at least spending that £50+ Million on the operation, and with the obvious large profit made from the coal mining they cannot claim that they haven't the money available.

I haven't factored in the £15 Million held in the escrow account here, but if the mining company were to fully restore the mine as per their original contractual obligation then they could do so with the mind to recovering that money at the end of a successful operation. They could therefore spend over and above the £50 Million knowing that they could recover the overspend up to a total cost of £65 Million (£50 Million plus £15 Million).

With the scaled-down costs that should result from what we've presented here, we think that the full, final restoration of the site, as the mining company signed-up to in their original planning agreement and are contractually obligated to provide, could be achieved.

Chris Austin

Resident - Merthyr Tydfil

=====

To: David Cross
From: Chris Austin

Hi David,

I've penned a quick response to your statements but will continue to research the issue and its resolution.

Time is not our friend here and any action needs to be taken quickly. Waiting on the mining company to act, when it is in their interests not to, will be counter-productive at best.

Chris Austin

Your Statement:

1. The Council are very much alive to the concern you have raised regarding the rising water levels within the mining void, which is no longer being pumped out by Merthyr South Wales Ltd (MSW). This issue has been under constant review by the Council and MSW are actively monitoring the water levels. At present the Council is satisfied that the water body is well contained within the mining void and it does not currently present a significant concern. The water levels would have to rise considerably higher before there would be any concern with the water over topping the land around the void.
2. There have been discussions between the Council and Natural Resources Wales (NRW) to determine whether the water body would fall within the remit of the Reservoirs Act 1975. NRW has advised the Council that Ffos Y Fran does not meet the test for being a large raised reservoir.
3. MSW are currently in the process of appointing hydrogeologists, hydrologists and water quality consultants to assist in the assessment of the water body within the void and the wider restoration of the mine. This will form part of the on-going discussions between MSW and the Council, as well as other regulatory bodies.
4. There are currently no plans for MSW to reintroduce pumps on site to remove the water from the mining void. This would likely have a significant impact on the viability of any restoration scheme and would likely present concerns with regard to the rate at which water could be discharged from the void into nearby water courses without causing flood risks downstream.
5. MSW has informed the Council that a planning application for a revised restoration scheme is scheduled to be submitted in late Autumn 2024. The revised restoration scheme is likely to include the retention of the water body within the mining void with the surrounding land being appropriately re-profiled.
6. The excavation of coal from the mine was ceased in November 2023 and there is no further transportation of any remaining coal stockpiles within the mine to the

Cwmbargoed Disposal Point (CDP). Coal that has already been conveyed to the CDP was being transported to TATA up until approximately mid-February 2024. MSW informed the Council in February that Tata no longer wished to receive coal from the site. The Council is aware that there is a small amount of coal remaining within the CDP that may be distributed to customers, which can be carried out under a separate permission relating to the CDP.

Our Response:

I don't think that I need to tell you how extremely disappointed we are with this news and that we find your response to this issue totally unacceptable. Even though we were expecting very little from this exercise, the news still hit us like a punch in the stomach.

It's the way that it is such a dead-ended statement that has been presented as a fait accompli; there's nothing can be done about it. You, the MTCBC LPA, are coming across as passive observers to this ongoing travesty of justice being effected by the mining company; not as active controllers of the situation.

We are very angry and disappointed, but that will get us nowhere further forward so we are trying to be constructive here.

We are very much of the mind that the situation that we now find ourselves in can be completely remediated if the LPA were to act quickly.

The MTCBC LPA have been unresponsive to this rapidly deteriorating situation, acting as reporters of the mining company's transgressions, when it is you who are the controlling authority and should be proactive in taking control of the awful situation we see unfolding before our eyes.

The mining company has now, clearly reneged on its contractual obligations to restore the mine, as agreed and ratified in the original planning conditions/planning consent to restore the land at Ffos-y-fran (Merthyr Common).

The £15 Million in the escrow account should now be released to the MTCBC LA for its use, and we would strongly suggest that it is used to put drainage pumps into the water filled void and start emptying it now, before it becomes too late to do so.

If a water filled void were to be the final solution, (God forbid!), independent civil engineers could then be contracted to survey the mining void for safety and its ability to hold a large body of water for the foreseeable future. We would then know exactly where we stand from a safety point of view, and how we can move forward with managing the water issue. But, in parallel with the pumping exercise, you could explore using the remaining escrow money to properly restore the mine as we discussed in an a previous communication with you.

With the steer that we have been given from our Civil Engineering advisor, we believe that the most significant safety and restoration work could be completed within a £15 Million budget. We are strongly of the opinion that MTCBC LPA must not give the remaining works, nor have access to any escrow money to the Merthyr (South Wales) Ltd. mining company.

The mining company has plainly telegraphed its intention to exit this contract with very little further significant inroads into rectifying the core works and issues of the final restoration of Ffos-y-fran. What remains is the smaller and less essential part of the final restoration exercise, and if they are holding the LPA to ransom over anything, they should be cut free. Nothing good will come of any further relationship with them.

The responsibility now falls to the MTCBC LPA, with their duty of care to the local populace, to take control of this situation and attend to the water filled void as a matter of urgency.

The failure of NRW to categorise the water filled void as a reservoir is difficult to comprehend. The Reservoirs Act 1975 was put in place to ensure that the containment of large bodies of water didn't constitute a danger and that's why it triggers a surveying and certification process that would give everyone the necessary level of confidence in the construction. This is a man-made construction that will, if left to its own devices, be filled with millions of gallons of water and looms over communities at about 1,000 foot above sea level. Why would this then not attract the same level of safety inspections and certification? It could become a dangerous structure that threatens local communities but we don't see any concern in your communication, nor in NRW's dismissal.

Response detail:

1. The current water level issues are still low which is why I was urging immediate action. We have few safety concerns with how it is now, (other than that it bodes ill for the future), but we cannot say that we will be saying so in a month or two's time! Pumping now will stop the water attaining a level that will fill the void beyond the point-of-no-return for having the ability to rectify the situation with pumps, and allow for a full and proper independent civil engineering survey of the void for its safety to contain such large volumes of water for the foreseeable future.

Overtopping is an issue, but certainly not the primary concern; that would be a concern for the future when the void is already full of water. The pressure of the water on the sides of the mine and the action of the water on the loose spoil around the sides (liquefaction) are our main concerns. Along with this is the unknown issue of toxic leachate. There are naturally occurring mineral toxins that will leach into the water, but in addition, anything else with a toxic content that has found its way into the void over the years will now leach out once dissolved in the water.

The primary risks of any large void that fills with water is down to three things:

Firstly, that water is a lubricant, and can cause the failure of a retaining structure/s simply by allowing the reduction of friction between two wetted particles - of whatever size and number - leading to their failure under load, the load being the weight or pressure of the water.

Secondly, that a structure immersed in water is reduced in weight by the volume of water it displaces, and this can lead to failure of retaining structures - a dam can be overturned if its foundations get saturated, and all fill and rock around a void filled with water gets saturated (dams have drains beneath them for this reason).

Thirdly, is the potential energy of the mass of water - how high it is above sea level - that is much of the risk. At sea level a landslip into a water filled void is dangerous, but every metre above sea level adds to the danger. The sides of the mine are very steep and loose.

The angle of repose of the material stacked against that void wall looks far too steep to be stable when immersed in water.

2. We need to see the reason/s why this large body of water doesn't attract the designation of a (large raised) reservoir. The Reservoirs Act 1975 was put in place to ensure the safety of the containment of large bodies of water, and that is exactly what this void is. It is an artificial construct, that is most likely fated to hold millions of gallons of water that would exceed - many times - the 10,000m³ minimum size requirement, sitting at a height of around 1,000 foot above sea level and looming above heavily populated residential areas. The 'reservoir' designation would attract an independent civil engineering survey of the void for its ability to safely hold a large body of water and it would attain a certification of its safety only after that detailed scrutiny. Without that survey the void will be allowed to fill with millions of gallons of water without the security of it being certified for that purpose. There have been many reservoir failures in the past here, and across the world, that have been the result of poor design and a dearth of safety checks. This mine would attract fewer safety checks than even they did unless we can trigger an **independent** safety inspection.

The LPA and the NRW has a duty of care to the local populace to ensure that an independent survey is performed to protect the safety of the local populace. The uncertified containment of a very large body of water could soon become a danger to life and the local populace need to be reassured by independent surveys that it is safe.

3. The safety checks on the mining void need to be performed by **independent** civil engineers, hydrologists and hydro-geologists as the mining company has

already demonstrated that it cannot be trusted to produce the level of confidence necessary by performing their own surveys. The mining company, by the very fact that they continued to mine coal unlawfully for 18 months beyond the end of their planning consent, worked coal for an extended period well beyond the edge of the mine boundary, and now they have switched off the drainage pumps with little concern for the detrimental, even dangerous impact of that action!

It appears to have been forgotten in your statement that this all takes time and the survey and any required action is time critical. 'The company are in the process of appointing...' Time is not our friend and by the time they have completed their preamble the void will already be under water. Then, whilst all this survey work is being performed, and with further talks carrying on beyond this; the pumps will still be turned off, the mine continues to fill with water and any discussions in the Autumn on the issue will become moot! This also raises the question; how can they survey the mining void properly when it is slowly being submerged under water? Will they be hiring surveyors who are also professional divers?

4. Without the pumps, the mining void fills with water and once it has passed the 'point of no return' the situation, whatever the risks and whatever decision may be made for its future, will become fixed. No restoration of the void will be possible once the void is filled with water, and that is the fundamental final restoration aim. We will be left with a dangerous, deep water filled void that will be too dangerous to use as public amenity and will need to be secured for all time. The threat to the local populace is uncertain. This danger has been illustrated today with a group of off-road/4-wheel-drive vehicles ploughing around the mine and the edge of the mining void. There appears to have been no security staff on site, as it will be the norm in the very near future. Then there's inquisitive children who will be drawn to the edge of the void by temptation and dare! With the steep and loose sides to the void their ability to exit the water after falling in will be hindered dramatically.

What a magnificent end to the largest Private/Public partnership funded land reclamation scheme in recent history.

5. By the Autumn of this year the mining void will be full of water and we will find ourselves in a position we cannot return from. The water cannot be pumped out because the volume will be too great for any of the nearby watercourses to handle *[we do need to verify this as it doesn't make logical sense to us - if it can be pumped out now, surely the pumps flow rate would be the same, it would just take longer to empty]* . This water filled void will be far too dangerous to be accessed by the public, and of no practicable use to the public. Without independent surveying and regular monitoring throughout its life (in perpetuity!) this large body of water sitting at a height of around 1,000ft above sea level will always pose a threat to the health and safety of the surrounding communities in one form or another.

Without restoring, or back-filling the mining void the re-profiling of the surrounding tips is just a case of prettying them up! This isn't the restoration that the local residents have suffered 17 years of opencast coal mining for. The core, and most beneficial, restoration targets will be avoided and the spoil tips will remain in place; they'll just be tidying them up around the edges and planting grass seed that will not grow successfully for any extended period anyway. Why is the LPA just reporting this and not doing something to stop this happening?! This was the whole aim of the entire project; this is a Land Reclamation Scheme, the coal extraction was just included to pay for that restoration works, not to be an end in itself. The mining company has made vast profit out of the coal sales and is now refusing to meet its contractual obligation to complete the restoration and make the land safe. What was the point of planning conditions? What use are Section 106 agreements? Where are your enforcement powers?

6. The frequency of the lorries on the haul road from the mine to the CDP throughout the first months of this year, and the tonnage of coal shipped out of the site, with coal trains leaving the CDP up until Friday 23rd February, appears to indicate that they were processing coal other than that produced by the relatively low volume barrel wash. Stockpiles should have been cleared by 30th November and its very hard to believe that they had stockpiled enough coal nor produced enough barrel wash output to take them through until now, 15th March 2024.
7. In addition, we had the height of overburden mound 3 checked and the flat top is sitting at 420 Metres above sea level and the additional structures built on there increase that height by a further 5-10 Metres. That exceeds, by a good margin (15-20 Metres), the maximum allowed height for that overburden mound. The maximum height was specified as 410 Metres, I believe.

Chris Austin

Sunday **17th March 2024**

RE: Ffos-y-fran Current Condition **14 March 2024**

To: 'Chris Austin'
From: Cross, David

Dear Mr Austin,

Thank you for your email below, of which I will respond to the various points you have highlighted in turn:

- The Council are very much alive to the concern you have raised regarding the rising water levels within the mining void, which is no longer being pumped out by Merthyr South Wales Ltd (MSW). This issue has been under constant review by the Council and MSW are actively monitoring the water levels. At present the Council is satisfied that the water body is well contained within the mining void and it does not currently present a significant concern. The water levels would have to rise considerably higher before there would be any concern with the water over topping the land around the void.
- There have been discussions between the Council and Natural Resources Wales (NRW) to determine whether the water body would fall within the remit of the Reservoirs Act 1975. NRW has advised the Council that Ffos Y Fran does not meet the test for being a large raised reservoir.
- MSW are currently in the process of appointing hydrogeologists, hydrologists and water quality consultants to assist in the assessment of the water body within the void and the wider restoration of the mine. This will form part of the on-going discussions between MSW and the Council, as well as other regulatory bodies.
- There are currently no plans for MSW to reintroduce pumps on site to remove the water from the mining void. This would likely have a significant impact on the viability of any restoration scheme and would likely present concerns with regard to the rate at which water could be discharged from the void into nearby water courses without causing flood risks downstream.
- MSW has informed the Council that a planning application for a revised restoration scheme is scheduled to be submitted in late Autumn 2024. The revised restoration scheme is likely to include the retention of the water body within the mining void with the surrounding land being appropriately re-profiled.
- The excavation of coal from the mine was ceased in November 2023 and there is no further transportation of any remaining coal stockpiles within the mine to the Cwmbargoed Disposal Point (CDP). Coal that has already been conveyed to the CDP was being transported to Tata up until approximately mid-February 2024. MSW informed the Council in February that Tata no longer wished to receive coal from the site. The Council is aware that there is a small amount of coal remaining within the CDP that may be distributed to customers, which can be carried out under a separate permission relating to the CDP.

I trust the above information is of assistance.

Kind regards

David Cross

Dear Mr Austin,

Thank you for your email below regarding the current condition of the mine. I can confirm that we are aware of the water within the void which is being actively monitored and we have been in discussions with Natural Resources Wales to seek their advice regarding its status as a reservoir. Please allow me some time to review the various points you have raised and provide a more detailed response. I will endeavour to provide this response by the end of this week.

Kind regards

David Cross

From: Chris Austin [REDACTED]
Sent: 12 March 2024 10:22
To: Cross, David [REDACTED]
Cc: dawn.bowden@senedd.wales; Gibbs, Kevin (Councillor) [REDACTED]
Sammon, Declan (Councillor) <[REDACTED]>
delyth.jewell@senedd.wales
Subject: Ffos-y-fran Current Condition

David,

please find attached a photograph of the Ffos-y-fran mining void, supplied to us by the Coal Action Network (CAN). It was taken yesterday morning, (11th March 2024). It is obvious that the pumps have been turned off and the mining void is now filling with water.

We are extremely concerned to see the state of the void, and the depth of the water within it. It is our understanding that this mining void has not been designed, nor constructed to hold water.

We believe that this now falls under the Reservoirs Act 1975, and if it meets the description of a 'large raised reservoir' the mining void at Ffos-y-fran will require certification by reservoir engineers during its construction phase, and prior to filling with water, (as it is most likely to collect and store over 10,000m³ of water).

It is now being allowed to fill with water, so could you please confirm the classification of the mining void as a 'large raised reservoir', or the reasons as to why it is not.

If it does meet the definition of a 'large raised reservoir' then we would please like to see the certification by a Reservoir Engineer of the Ffos-y-fran mining void for the safe collection and storage of such a large body of water. I would suggest that if the Ffos-y-fran mining void hasn't been surveyed and certificated by reservoir engineers then it would, ipso facto, be termed a high-risk reservoir because of the unknowns.

Mining voids, by default, are only surveyed to contain air, not water, and the extra strain of millions of gallons of water would exert massive pressure on the walls and foundations of this structure. For every 10,000m³ of water the weight would increase by 10,000 Tonnes, and the Ffos-y-fran void would contain many multiples of this. (*n.b. 10,000m³ of water would be contained in a cube of approximately 22 Metres on a side, or around 72 feet on a side*). The void would need to be sized to confirm the total volume.

Also, the leachate of toxic substances from the contents of the void could leak out into the local water table and waterways if the void is allowed to fill with water.

As you are currently negotiating the final restoration strategy of the Ffos-y-fran mining void, does this filling of the void with water now indicate a fait accompli on

the final restoration of the void? Once filled with water there will be no going back from this position as it would be too onerous and expensive a task to pump such a large volume of water from the void. It is filling up rapidly so it could most probably achieve a point of no return quite soon. We have seen this happen elsewhere, Margam and East Pit are the most recent examples, and we don't want to see it happen here. The pumps need to be turned back on as a matter of urgency.

Could you please, as a matter of urgency, confirm whether this is a 'large raised reservoir' and if so, let us have sight of the reservoir safety certification, or explain to us why it doesn't attract that designation. Could you also indicate/confirm what the projected future of the mining void is to be?

In addition, coal is still leaving the site by bulk carrier lorries apparently bound for Rugby Cement/Cemex. (We determined this by the sign writing and telephone numbers on the lorries). The stockpiles of coal at the site appear to be never-ending! This was a task that they were supposed to have completed by 30th November 2023.

Many thanks in advance,

Chris Austin

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Excerpts from the Reservoirs Act, 1975

<https://www.legislation.gov.uk/ukpga/1975/23>

"Large raised reservoir": England and Wales

(1) In this Act "large raised reservoir" means—

(a) a **large, raised structure** designed or used for **collecting and storing water**, and

(b) a **large, raised lake or other area capable of storing water which was created or enlarged by artificial means**.

(2) A structure or area is "**raised**" if it is capable of holding water **above the natural level of any part of the surrounding land**.

(3) A raised structure or area is "**large**" if it is **capable of holding 10,000 cubic metres of water** above the natural level of any part of the surrounding land.

(4) The Minister must make regulations about how to calculate capacity for the purpose of subsection (3) (and "natural level" and "surrounding land" are to be construed in accordance with the regulations).

(5)The Minister may by regulations provide for a structure or area to be treated as “large” by reason of proximity to, or actual or potential communication with, another structure or area.

(6)In making regulations under subsection (5) the Minister shall aim to ensure that a structure or area is treated as large under the regulations only if 10,000 or more cubic metres of water might be released as a result of the proximity or communication mentioned in that subsection.

(7)The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6).

(8)The Minister may by regulations provide for specified things not to be treated as large raised reservoirs for the purposes of this Act.

(9)A reference to a large raised reservoir includes a reference to anything used or designed to contain the water or control its flow.

(3)It shall be for the [F18relevant authority] in whose area a reservoir is situated, if they are not themselves the undertakers, to secure that the undertakers observe and comply with the requirements of this Act.

(6)For purposes of this Act “enforcement authority” means, in relation to a reservoir, the [F18relevant authority] charged under subsection (3) above with securing that the undertakers observe and comply with the requirements of this Act (and, where the context so requires, includes the authority that would be so charged if the reservoir were a large raised reservoir); and accordingly the provisions of this Act relating to the enforcement authority for a reservoir do not apply in the case of a reservoir if a [F18relevant authority] are the undertakers and the reservoir is situated wholly in the area of that authority.

NRW or LPA responsibility?

22 Feb 2024

Dear Mr Austin,

Thank you for your emails below.

At present there are two stockpiles of coal currently remaining within the mine. One stockpile is of inferior coal which we understand has a high sulphur content and the other stockpile is being processed through the barrel wash. There is no further coal being excavated and this has been the case since the end of November 2023. The stockpiles of coal have been clearly identified to the Council and the matter is being reviewed on a weekly basis.

Whilst Merthyr South Wales (MSW) have indicated an intention for the inferior coal is to be transport to Tata, this is not currently taking place and it remains in-situ. There are environmental benefits to removing the inferior coal. In regards to the stockpile which is

currently being processed in the barrel wash, approximately 85% of the materials is actually being tipped back into the void of the mine. The coal you see being moved to the Cwmbargoed Disposal Point (CDP) is from the barrel wash stockpile only. This process has been delayed for a number of reasons, in part due to the inclement weather, but also due to technical issues at Tata which in turn has affected the transportation of the coal. The removal of this stockpile is also of benefit to the overall restoration of the site.

In regards to the restoration proposals, the Council has been in discussions with MSW who have appointed consultants to prepare a revised restoration scheme. There are also ongoing discussions with MSW to establish what interim restorations could take place ahead of any revised scheme.

Kind regards

David Cross

[Comment: Chris Austin - 23042024 - if you are taking spoil and processing it to retrieve 15% coal and discarding 85% of the product, you are extracting coal. This is an unlawful activity as the mining company's planning consent to extract coal ended on 6th September 2022. This is not removing stockpiled coal!]

30 January 2024

Dear Mr Austin,

Thank you for your email regarding the current activity taking place on site.

As is referenced in the statement in your email below, it was agreed with Merthyr South Wales (MSW) that the remaining stockpiles would be removed from the mine and an extension of time would be considered if there were matters causing a delay which is outside of their control. This is being reviewed on a weekly basis. The majority of what is currently left on the site is coal that is being processed in the barrel wash, of which approx. 80-85% of the stockpile is being distributed back into the void, which is also of benefit towards the restoration of the site.

There continues to be discussions with MSW to seek the submission of a revised restoration scheme, of which they have appointed consultants to prepare the necessary environmental assessment and plans.

Kind regards

David Cross

From: Chris Austin <[REDACTED]>
Sent: 22 January 2024 10:39
To: 'Chris Austin' <[REDACTED]> Cross, David <[REDACTED]>
Cc: dawn.bowden@senedd.wales; Gibbs, Kevin (Councillor) <[REDACTED]>

Sammon, Declan (Councillor) <[REDACTED]>
Subject: RE: Ffos y fran Coal operations

David,

have you managed to obtain an explanation for this perceived further contravention of planning law, agreements and directives? If so, could you please inform me of the outcome?

I am assuming that you are still negotiating/renegotiating with this company in relation to the final restoration of the Ffos-y-fran site? If confirmed as 'unlawful', this would be further evidence of the mining company's complete disregard for regulation, directives, laws, and deadlines and I hope that this would be factored in when compiling a means of holding them to account over future restoration works.

Chris Austin

From: Chris Austin <[REDACTED]>
Sent: 22 February 2024 11:25
To: Cross, David <[REDACTED]>
Cc: dawn.bowden@senedd.wales; Gibbs, Kevin (Councillor) <[REDACTED]>
Sammon, Declan (Councillor) <[REDACTED]>
delyth.jewell@senedd.wales
Subject: FW: Ffos y fran Coal operations

Hi David,

do you now find yourself in a position to answer my query?

Coal extraction continues at Ffos-y-fran and a visit to the site yesterday (Wed 21/02/2024) showed quite a lot of activity and refuelling of vehicles up there.

Today there was a large coal train being loaded at the Coal Disposal Point/Railhead at Cwmbargoed.

The stockpile at the back of the CDP is being topped up and decremented regularly, so the coal extraction/mining operation at FyF is ongoing. Popular opinion is that there wouldn't be much coal for them to process from the spoil tips as it's mostly overburden, so they would most likely be mining it.

As I've asked, are you, (the MTCBC LPA), aware of this continuing coal production activity? Are you continuing to extend ad-hoc, rolling planning consent to the mining company, Merthyr (South Wales) Ltd. to continue coal production at Ffos-y-fran? If so, could you explain for what reason?

Many thanks in advance,

Chris Austin

Coal train being loaded with coal at the Cwmbargoed railhead, Thursday 22nd February 2024 - 18 months beyond the end of their planning consent to mine coal at Ffos-y-fran

From: Chris Austin [<mailto:> ██████████]
Sent: Monday, **February 12, 2024** 1:20 PM
To: 'Chris Austin'; ██████████
Cc: dawn.bowden@senedd.wales; ██████████
██████████; delyth.jewell@senedd.wales

Subject: RE: Ffos y fran Coal operations

Hi David,

are you, (the MTCBC LPA), still extending ad-hoc planning permission to the mining company, Merthyr (South Wales) Ltd. to continue coal production at Ffos-y-fran?

It is now 12th February (2024) and coal trucks are bringing what looks very much like coal into the railhead at Cwmbargoed from the mine at Ffos-y-fran. The coal stockpile at the back of the railhead (Coal Disposal Point) appears to be increasing in size too. I can't imagine that extracting and moving coal out is part of any ongoing restoration works; certainly not part of the planning consent extant.

If this is from the 'barrel wash' (a method of extracting coal from colliery spoil), then that would be a completely open-ended exercise as there is coal contained in all the spoil heaps on the site; many, many thousands of Tonnes I would guess. It was our understanding that the clearing of coal stockpiles was being allowed because their work there had been slowed down or delayed by severe weather conditions which have long passed. Have you placed a limit on the 'barrel wash' coal production exercise? After all, coal extraction is 'coal extraction', whatever the means of production and continuing to allow barrel wash is allowing coal production at the site to continue.

Could you please let me know what the current situation is up there as it is our understanding that they are either moving forward on restoration works, or on stop awaiting a decision on the way forward on the restoration work after your renegotiation exercise. Neither of these understandings include the production of coal.

Many thanks,

Chris Austin

ps attached are a couple of quick snaps taken whilst passing the site this morning (12th February 2024). The lorries are quite frequent on the haul road.

From: Chris Austin [<mailto:> ██████████]
Sent: Monday, **January 22, 2024** 10:39 AM
To: 'Chris Austin'; ██████████
Cc: 'dawn.bowden@senedd.wales'; ██████████
██████████
Subject: RE: Ffos y fran Coal operations

David,

have you managed to obtain an explanation for this perceived further contravention of planning law, agreements and directives? If so, could you please inform me of the outcome?

I am assuming that you are still negotiating/renegotiating with this company in relation to the final restoration of the Ffos-y-fran site? If confirmed as 'unlawful', this would be further evidence of the mining company's complete disregard for regulation, directives, laws, and deadlines and I hope that this would be factored in when compiling a means of holding them to account over future restoration works.

Chris Austin

David,

many thanks for this prompt reply. I wasn't specifically looking for a reply, but I was treating the discussion as an open forum to explore the FyF restoration issues, share information, present our views on the situation, our suggestions, and the LPA's response to the applicant's behaviour over the last 13 months. I had hoped that this dialogue could continue.

You (the MTCBC LPA) have stated previously that you were working with the mine operator on the renegotiation of the existing restoration strategy, and that triggered this discourse. The mine operator's statement that he was closing down the operation on 30th November (2023) was also a key factor.

As this affects us directly as Merthyr residents, and with us living alongside the Ffos-y-fran mine, we believe that we should have input to any planning process discussing its future, but, to us, this has largely been progressing 'behind closed doors'.

The information we have used and presented has been gained through research and long-term experience. The financial information came from statements in the planning committee meeting and analysis of Companies House submissions by third parties. The mining operation's coal production tonnage comes from the Coal Authority, observations of the coal trains and bulk lorries, and the global price of coal used to calculate the mining company's turnover is readily available on several financial tracking sites online. This is the only way we can obtain this information, but it is carefully searched, vetted and selected. The ongoing planning process is effectively a closed book to us, so careful estimation gives a far better understanding than just taking the figures from the mining company who have a vested interest in misrepresenting the situation.

We feel that if we were just to wait for all this to play out, we would be presented with the outcome as a fait accompli, and it could be one that we would not have supported, or agreed to, if we were part of the process.

If I can prevail on you to put yourself in our position, and look at this from our point of view, using the information and observations that we have available to us.

We now have a situation at FyF that is, to us and many others, highly incongruous. We have a mining company that has unlawfully extracted coal for 13 months beyond the end of their planning consent, and who are working coal seams outside of the mine's licensed boundary.

Over 8 months into these unlawful coal mining activities the MTCBC planning committee eventually sat and our duly elected representatives roundly and unanimously rejected the mining company's Section 73 planning application to extend their planning consent to mine coal at Ffos-y-fran. The planning committee gave clear instruction for enforcement action to be implemented as soon as possible and the impression by all was that this was to be executed in short order.

The coal extraction continued at a pace...and still does to this day.

We have seen statements from esteemed legal counsel and planning experts stating that you, the MTCBC LPA, could implement a 'stop notice' (cease and desist) on the mining company for their unlawful coal mining activity, at any time, with just short notice (3 days, to 28 days).

Yet, neither you, (MTCBC LPA), nor the Coal Authority have served the company with enforcement action beyond you sending them a notification of intent over 9 months after their transgression started, and the Coal Authority much further on.

[As an aside, we are still completely baffled by how the mining company didn't elect to challenge the refusal of their planning application to extend operations, yet they then challenged the threatened enforcement action that was to compel them to align with that planning committee decision. Bizarre!].

I realise that the mining company have appealed the enforcement action, and that the Welsh Government have elected not to expedite their appraisal of the appeal, but this situation didn't arise until over 10 months into the unlawful coal mining activity. We feel that there was sufficient opportunity to bring about a favourable conclusion in that period.

We have been made aware of the difference between 'unlawful' and 'illegal' and we have been informed that until enforcement action is actually served on the mining company its activities can only be termed 'unlawful'. Our information is that unless that activity becomes termed 'illegal' (in planning and common law), then the Local Authority can take no future action to recover costs, monies, land, and property.

There is also the additional issue of the Motocross track, (built to national standards and at great expense), on top of the largest spoil tip (OB3 - Overburden Mound 3). There is no planning consent for this, and I don't believe that they sought any, but the operator is now claiming Permitted Development (PD) when, in reality, it meets few to none of the criteria for PD, yet we hear from you that the LPA is now speaking to the operator about retrospective planning consent. To us, a completely inappropriate response by our LPA as this spoil tip is scheduled to be the first spoil tip to be returned to the mine to initiate its restoration under the existing planning consent. This consent is very much still the only planning consent currently in place in law. It is also built on land that is subject to planning conditions imposed under that existing, current planning consent.

To us, this displays a tacit acceptance by the LPA that this spoil is never to be returned to the mine; a contravention of the mining company's current planning consent.

How is anyone going to perceive this? They would see a cash-rich mining company dictating to the MTCBC LPA, and the LPA kow-towing to those dictats. It also telegraphs the direction of the revised restoration talks, and what Merthyr residents are soon to be presented with.

Your last sentence (*'In the event that a revised restoration strategy is submitted it would be for the applicant to set out their case as to the reasons why an alternative scheme is being presented'*) seems to imply that you (the LPA) are taking a passive position, and that you will act if and when presented with a new restoration strategy but, by your own admission, you are a party actively involved in the discussions around the ongoing restoration renegotiation, and you are not just waiting on the presentation of the mining company's revised plans at some time in the future. What we have presented previously in this ongoing discourse is information that you would need to have to hand in pre-application submission discussions, or negotiations, and not taking this information into account would directly impact, or skew, any decisions made by you at that time.

Unfortunately, you (MTCBC LPA) are now being seen as 'giving ground' to all of the mining company's demands since September 6th 2022, and 'tolerating' its unlawful activities.

This, primarily, gives us little confidence in any sort of favourable outcome for Merthyr, or its residents, but we are not just concerned for our future, we are also worried about the future of the planning process and how its being practiced here in Merthyr, and in Wales. This is being watched closely by interested parties, (inside of public services but more worryingly outside), and your perceived intransigence may now be seen as demonstrating to company's in Wales that a total disregard for the planning process will not result in any effective form of punitive response from the LPA; that the LPA has no teeth when it really comes down to it, and manipulative companies could seemingly get away with breaching planning law with impunity.

I'm sorry that this sounds like a rant, it is not meant to be so, but 13 months of a clear breach of planning conditions without the perpetrator being brought to book is wholly unacceptable to

us. Either the planning system is being manipulated to a degree not seen before by an extremely astute corporation (!), or the planning system in Wales is no longer fit for purpose.

Chris Austin

From: Cross, David [mailto: [REDACTED]]
Sent: Sunday, **October 1, 2023** 1:41 PM
To: 'Chris Austin'
Cc: Sammon, Declan (Councillor); Gibbs, Kevin (Councillor); dawn.bowden@senedd.wales; delyth.jewell@senedd.wales; Jones, Judith (Planning & Neighbourhood Services); [REDACTED]
Subject: RE: Ffos y fran Restoration Cost Statement [NOT PROTECTIVELY MARKED]

Dear Mr Austin,

Thank you for your email. I am not quite sure if you were expecting a response to the commentary you have provided below. I am not really in a position to provide any meaning response given that as a matter course, it would be usual for the planning department to seek to investigate the financial position of any developer. Whilst some information can no doubt be obtained, this may not always be accurate or complete. In the event that a revised restoration strategy is submitted it would be for the applicant to set out their case as to the reasons why an alternative scheme is being presented.

Regards

David Cross

From: Chris Austin < [REDACTED] >
Sent: 26 September 2023 13:25
To: Cross, David < [REDACTED] >
Cc: Sammon, Declan (Councillor) < [REDACTED] >; Gibbs, Kevin (Councillor) < [REDACTED] >; dawn.bowden@senedd.wales; delyth.jewell@senedd.wales; Jones, Judith (Planning & Neighbourhood Services) < [REDACTED] >; [REDACTED] < [REDACTED] >
Subject: RE: Ffos y fran Restoration Cost Statement [NOT PROTECTIVELY MARKED]

David,

thank you for your prompt reply.

My apologies for the rushed response, the subject mater deserves to have more time spent on it than I have at the moment. I will get back to you with a more expansive reply as soon as possible. I have a very busy week this week, but I'll do what I can.

Miller-Argent (South Wales) Ltd. were absolved (rightly, or wrongly!) of all further restoration responsibilities when they sold the company to Merthyr (South Wales)

Ltd. (*Gwent Investments, and Blackstone (South Wales) Ltd., as was*) in 2015/2016; their communications at the time were stating £60 Million as the cost of restoration. If they'd put any monies aside to pay for it, then they had a bean-feast on it! But, that is now largely irrelevant.

The profits made from the mining operation are clear to those who understand corporate finances. I will admit to not being an expert in this area, but Companies House filing alone will give a basic audit trail of the money made from this mining operation by Merthyr (South Wales) Ltd., and its parent/subsidiary companies, up until the end of December 2021. It is also to be noted that because of the Russo-Ukrainian war, coal prices achieved a record high during 2022, and went from the average £60 per Tonne to a peak of £480 per Tonne. It averaged about £250-£300 per Tonne across the year, and not to mention a further 14 months of unlawful coal extraction at still extremely good coal prices, and decent profits (or why would they have continued to operate?).

At the planning committee meeting of April 26th (2023) it was stated that the operator had taken £75 Million in profits. Statements made by the Good Law Project have indicated payments to shareholders of £50 Million (allegedly, a small number of shareholders held 'in-house'), and a holding of £80 Million in Gwent Holdings (parent company?). I am not best placed to corroborate this, but surely the MTCBC LA has financial experts that could readily corroborate this? It does, however, demonstrate that the information is readily available to all and appears to show that the mining company is, in actuality, extremely financially solvent.

As you, the MTCBC LPA, are renegotiating the final restoration of Ffos-y-fran founded on the assumption that the mining company are unable to afford the full restoration of the mine as originally agreed, it may be prudent to ask one of your financial experts to go through their accounts before signing any new agreement. Being open-minded is a laudable approach, but it must be tempered by the facts of the mining company's actual financial situation. In my painfully earned experience, there is a fine line between pragmatism and capitulation.

The £15 Million 'bond' in the escrow account was always just a 'safety net' amount, (though woefully inadequate), it was never set up to cover the full cost of the final restoration of the mine.

Merthyr (South Wales) Ltd., (and Miller-Argent before them), agreed, contractually, to the full restoration of the FyF mine, at their cost, and MSW are still legally obligated to provide it.

The Ffos-y-Fran Land Reclamation scheme was established first-and-foremost to restore/reclaim the land with the sale of the mined coal to pay for the reclamation/restoration work. It was stated that any monies over-and-above that responsibility were to go to the operator.

Many thanks, again,

Chris Austin

Tuesday **26th September 2023**

p.s.

I have the 2014 Welsh Government statement. and the 2018 statement here on file, but I will need to get the source links to you.

4.3.3 Sites with potential risk

Ffos-Y-Fran, Merthyr Tydfil

This 400 ha site is operated by Miller Argent (South Wales) Ltd, and there remains an estimated 6.6 million (m) tonnes of coal to be extracted, from a total anticipated reserve of 10.8 m tonnes. The site is quite confined and is being worked to a depth in excess of 150 m from the surrounding ground level in places. Although there is as much progressive restoration taking place as the site permits, there are very large overburden mounds which will finally need to be returned to the excavated void. Based merely on the likely cost of bulk earthmoving of those overburden mounds, and the final restoration and treatment of the surface of the 400 ha site, it is likely that the fixed bond of £15 m held by the LPA, Merthyr Tydfil County Borough Council, falls well short of a **worst case restoration cost** which could be **in excess of £50 m** based on the collected information

The only 2018 reference that I hold on file on my PC is via a BBC link:

<https://www.bbc.co.uk/news/uk-wales-south-east-wales-44335857>

Ffos-y-Fran: Clean-up row over opencast mine - 1st June 2018

...He [*Matt Hutchings, QC for the local authority*] argued that a company with an annual operating profit of around £10m was unlikely to be able to find the funds needed for the final payment in one lump sum.

"What security does the council have? None," he said.

The court heard that total restoration costs had been estimated at around **£62m**

From: Cross, David [mailto: [REDACTED]]
Sent: Monday, **September 25, 2023** 4:32 PM
To: 'Chris Austin'
Cc: Sammon, Declan (Councillor); Gibbs, Kevin (Councillor); dawn.bowden@senedd.wales; delyth.jewell@senedd.wales; Jones, Judith (Planning & Neighbourhood Services); [REDACTED]
Subject: RE: Ffos y fran Restoration Cost Statement [NOT PROTECTIVELY MARKED]

Classification: NOT PROTECTIVELY MARKED
Classification: **NOT PROTECTIVELY MARKED**

Dear Mr Austin,

Thank you for your email below and the suggestions regarding the restoration work at Ffos y fran.

I have noted your comments on the initial anticipated costs for the restoration work, which were previously estimated to be in the region of £50m - £60m. I am not aware as to whether Miller Argent (former mine operator) or Merthyr (South Wales) Ltd (MSW) have set aside funds for the restoration works based on these previous estimates, nor has the Council had sight of any financial records to demonstrate otherwise. Nonetheless, the restoration of the site remains the responsibility MSW to ensure they comply with the relevant planning conditions. To date MSW has not indicated that they have any other funds in addition to the £15M secured in the Escrow accounts.

The present situation is that a restoration strategy was granted as part of the planning permission and further details are required, which sets out the final details and aftercare. I would agree with your suggestion that a focussed and priority driven approach to the restoration works is sensible to ensure that a suitable/viable restoration scheme can be delivered. However, this approach may involve changes to the approved scheme, particularly if it deviates from what has been granted permission. In this regard MSW have indicated that they intend to submit a revised restoration scheme and the Council remains open-minded to a possible alternative scheme. This would likely involve a review of how the existing overburden mounds are restored and any other cost effective methods that can be utilised to improve the viability of the restoration works.

Kind regards

David Cross

From: Chris Austin [REDACTED]
Sent: **20 September 2023** 13:21
To: Cross, David < [REDACTED] < [REDACTED] > Jones, Judith (Planning & Neighbourhood Services) [REDACTED]
Cc: Sammon, Declan (Councillor) < [REDACTED] > Gibbs, Kevin (Councillor) < [REDACTED] > dawn.bowden@senedd.wales; delyth.jewell@senedd.wales
Subject: RE: Ffos y fran Restoration Cost Statement [NOT PROTECTIVELY MARKED]

David,

firstly, thank you for this update; it is very enlightening.

We still find it hard to accept that the increase in fuel costs will impact the restoration costs to the degree that Huw Towns has estimated, and the methodology used was crude (no slur intended), but we understand that any other method of estimating the costs would entail involving parties who have a vested interest in further overinflating the restoration costs. It would be more prudent to look at a fixed sum of money and build a process that best utilises that limited resource.

If we ignore that concern, for now, and concentrate on the situation extant, then I would like to explore an end goal scenario that would give Merthyr residents most of what they want; maybe, with good fortune, all that they expected.

It is to be noted that during the final restoration phase, the overheads of the rail transport, the long and frequent trips of heavy lorries up and down the haul road, the cost of running the coal grading, barrel wash, and washery, the drilling and blasting costs, and operational costs of running the coal yard, will all vanish. I would think that vehicle numbers could be reduced and with that, much reduced fuel usage, and their commensurate maintenance costs. Staffing numbers may also reduce with a subsequent reduction in wage costs.

It is also to be noted that with just light research into the published finances of the mining company, Merthyr (South Wales) Ltd., appears to reveal healthy profits that would indicate that they could readily accommodate the cost of restoration to the level discussed here.

The original cost of restoration was estimated by the Welsh Government at £50+ million in 2014, with the mining company's (Miller-Argent Ltd.) stated estimate of £60 Million at the time. This information was available to Merthyr (South Wales) Ltd. at the time of their purchasing of the Ffos-y-fran scheme and was patently acceptable to them at that point in time when they signed the planning and restoration agreement. In 2018, the figure was reappraised, or confirmed, as £60 Million.

We can assume from this that there can be no argument with that already fully understood and agreed figure; just with the newly estimated figure.

The mining company has already lodged £15 Million in an escrow account and that money would become available to them at the end of a successful and complete final restoration of the site, so the company could temporarily invest that further sum into the restoration works knowing that it would come back to them upon successful completion of the works.

That amounts to a figure of £75 Million that would be available for the final restoration of Ffos-y-fran by Merthyr (South Wales) Ltd..

This is the bottom-end figure estimated by Huw and, if we are very fortunate, it could prove to be enough to cover the full cost of the final restoration works. As you stated, there is much variability in the broad range of figures within the estimated restoration costs.

A focussed and priority driven approach to the restoration undertaking would see the majority of the most important and necessary work completed, and with a favourable fuel cost situation, the final restoration may actually be completed.

Obviously, I am the layman here, but I would suggest that moving the nearest overburden mound into the void to start the process would be the least fuel intensive exercise by limiting the distance that the lorries have to drive with the spoil. Then, moving out in ever increasing circles would provide the most fuel efficient means of getting the rest of the overburden back onto the site.

When the £75 Million runs out, they would stop work. Of course, a phased approach would have to be used to ensure safe and acceptable completion of each phase in case the money runs out and leaves something in an unsafe condition. There would have to be clarity of costs and spend and the LPA would need to audit that spend during each phase to verify cost effective progress.

Of course, if the mining company fails to complete the work to the sum agreed (£75 Million), or fails to complete in an acceptable and timely manner, i.e. they have reneged on their agreed legal obligations, the £15 Million in the escrow account would still be available for the MTCBC LPA to make the final safe restoration of the last worked phase.

If they incorporate this approach it would in all probability give us the restoration, or as near to the restoration, promised at the start of this project.

It is our belief that £75 Million would make quite a dent in the restoration of Ffos-y-fran, and would be a win-win for the residents and the Local Planning Authority.

I await your response to our suggestion,

Chris Austin

From: Cross, David [mailto: [REDACTED]]
Sent: Wednesday, September 13, 2023 5:01 PM
To: 'Chris Austin'; [REDACTED] Jones, Judith (Planning & Neighbourhood Services)
Cc: Sammon, Declan (Councillor); Gibbs, Kevin (Councillor); dawn.bowden@senedd.wales; delyth.jewell@senedd.wales
Subject: RE: Ffos y fran Restoration Cost Statement [NOT PROTECTIVELY MARKED]

Dear Mr Austin,

Thank you for your email enquiry regarding the estimated costs for the restoration works.

At the time of the application being presented to the planning committee, as you have noted, reference was made to an estimation of the restoration costs from anywhere between £75m to £120m. About 96% of the restoration cost relates to the replacement of overburden and soils. Whilst there have been some progressive restoration works over the course of the development, the greatest cost of moving material is fuel, but there are also costs relating to maintenance/parts of plant and machinery etc which are impacted by inflation. Additionally, there has been a rise in fuel costs, of which the mine operator no longer benefits from discounted diesel (i.e. red diesel), which has had a significant impact.

When the application was reported to the planning committee a wide range of the costs were provided as it is difficult to know the exact amount of material that needs to be moved. However, working on a worst case scenario it was noted £120m would be the potential cost, which was based on the cost of moving overburden being roughly double what it was when it last estimated and the cost of moving soils being slightly less than double. The figures can fluctuate considerably over the year, hence a broad range was estimated. The restoration costs were estimated by our minerals advisor (case officer).

I trust this provides a bit more clarity of the reasons for the rise in the restoration costs.

Kind regards
David Cross

From: Chris Austin [[mailto: \[REDACTED\]](#)]
Sent: Thursday, August 24, 2023 9:36 PM
To: [REDACTED]
Cc: [REDACTED]
'dawn.bowden@senedd.wales'
Subject: Ffos y fran Restoration Cost Statement

Hugh/David,

at the planning committee meeting of 26th April 2023, it was said that the cost of the final restoration of the Ffos-y-fran opencast coalmine was reported as £75 to £120 Million.

That is an incredible hike on the previous two estimates of 2014 (£50 Million) and 2018 (£60 Million).

Could you please tell us where you got that estimate from? Was it the Coal Authority, a Government Department, or the mining company (Merthyr (South Wales) Ltd) themselves?

We are at a loss to understand the large hike in costs when, in our understanding, the only major rise in costs would be the diesel fuel for the diggers and dumpers and the cost of the coal train. We accept that the cost of fuel has risen greatly, but as the top end of this estimated restoration cost (£120 Million) is now being used in all communications and negotiations we would like to chase an explanation of how this hike is justified. After all, quite a bit of restoration has been carried out since the earlier estimates and the void is now a lot smaller than it was. An increase of 100% (£60 Million) on the later estimate to cover just the diesel increase is difficult to accept.

If you could let us know who the estimate can be attributed to we can chase up the justification for such a huge costs increase.

Could you please acknowledge receipt of this email?

Chris Austin

David,

sorry for the late reply, I've been out of commission for a while.

The motocross track works on top of OB3 are now complete and the first national races are scheduled for next weekend (3rd and 4th June).

As far as we understand, this has been built using 'permitted development' and as such hasn't been through any form of public scrutiny.

To us, this is our land. This is part of Merthyr Common (latterly termed Ffos-y-fran) which was temporarily stored offsite whilst the mining company extracted the coal underneath it. It was still our land whilst in storage, and the mining company were/are obligated to put it back to where they took it from when they finished coaling.

In our opinion there are two issues here.

1. He has sequestrated/annexed/appropriated land that doesn't belong to him, and for his own commercial gain.
2. He's stuck 2 fingers up to the restoration of this land; something that he was obligated to complete as part of his planning conditions/consent

The original overview of this scheme was:

"The 'Ffos-y-fran **Land Reclamation Scheme**' represents the third, and final, stage of the wider East Merthyr Reclamation Scheme'. It is the largest of the original 3 phases and will restore over 360 Hectares of previously derelict and disturbed land. **Once completed, the land, which will be fit for upland grazing, with safe access for use by the community, will be returned to the Planning Authority**".

Also, just to rub salt into the wound, one of the arguments that was used to originally leverage planning consent was that it would take the noisy, illegal off-road motorbikes off the hillside over East Merthyr. Now the mining company are facilitating this activity.

Some press statements below (*nb Merthyr event dates changed to 3rd and 4th June*)::

Round 2 – 6th & 7th May, Monster Mountain, South Wales

One new venue just didn't seem to be enough! So we're going to another for round two, this time 'Monster Mountain'. It will also be the first time the MX Nationals visits Wales and we're excited about that, as much as we are about the circuit itself. It will be another Alfie Smith and Justin Barclay build and design and they have plenty of space to work with to build a 'monster' of a track too as the venue is a former quarry....a bloody big one. The track will another GP spec design with wide open, flowing turns on hard pack dirt and plenty of room for viewing and for

spectators to get around. We're looking forward to seeing who will be crowned the first 'King of the Mountain'.

2023 Calendar Confirmed for MX Nationals UK

- December 23, 2022

Paul Irwin (Series Director) and Jeff Perrett of MX Nationals UK have announced the 2023 calendar for the Championship.

With the Championship celebrating its 10th anniversary in 2023 riders will get the opportunity to try out two brand new venues (Oakhanger and Monster Mountain MX). Preston Docks makes a return to the calendar but on a fully revamped circuit. View the full calendar below.

Round 1 – 11th & 12th March – Oakhanger, near Bordon

Round 2 – 6th & 7th May – Monster Mountain MX, Merthyr Tydfil, South Wales

Round 3 – 3rd & 4th June – Preston Docks

Round 4 -8th & 9th July – Oxford Moto Parc, Abingdon

Round 5 – 5th & 6th August – Cusses Gorse MX, near Salisbury

Round 6 – 2nd & 3rd September – Hawkstone Park

Two new tracks for 2023 MX Nationals

- December 23, 2022

There are two brand new circuits and one fully revamped one in the six-round MX Nationals next season

The series kicks off on 11-12 March at Oakhanger near Bordon in Hampshire, a deep sand venue in forestry land. It's similar to the venue used for the Natterjack enduro, also near Bordon.

Round two is at the new Monster Mountain venue near Merthyr Tydfil in South Wales. The hilltop track is hard-pack but drains well and is being built by track builders Justin Barclay and Alfie Smith.

A newly-revamped Preston Docks is set for the third round. The circuit has recently been re-taken over by Lee McGarry who has posted some pics of the track that's currently being worked on (as seen above).

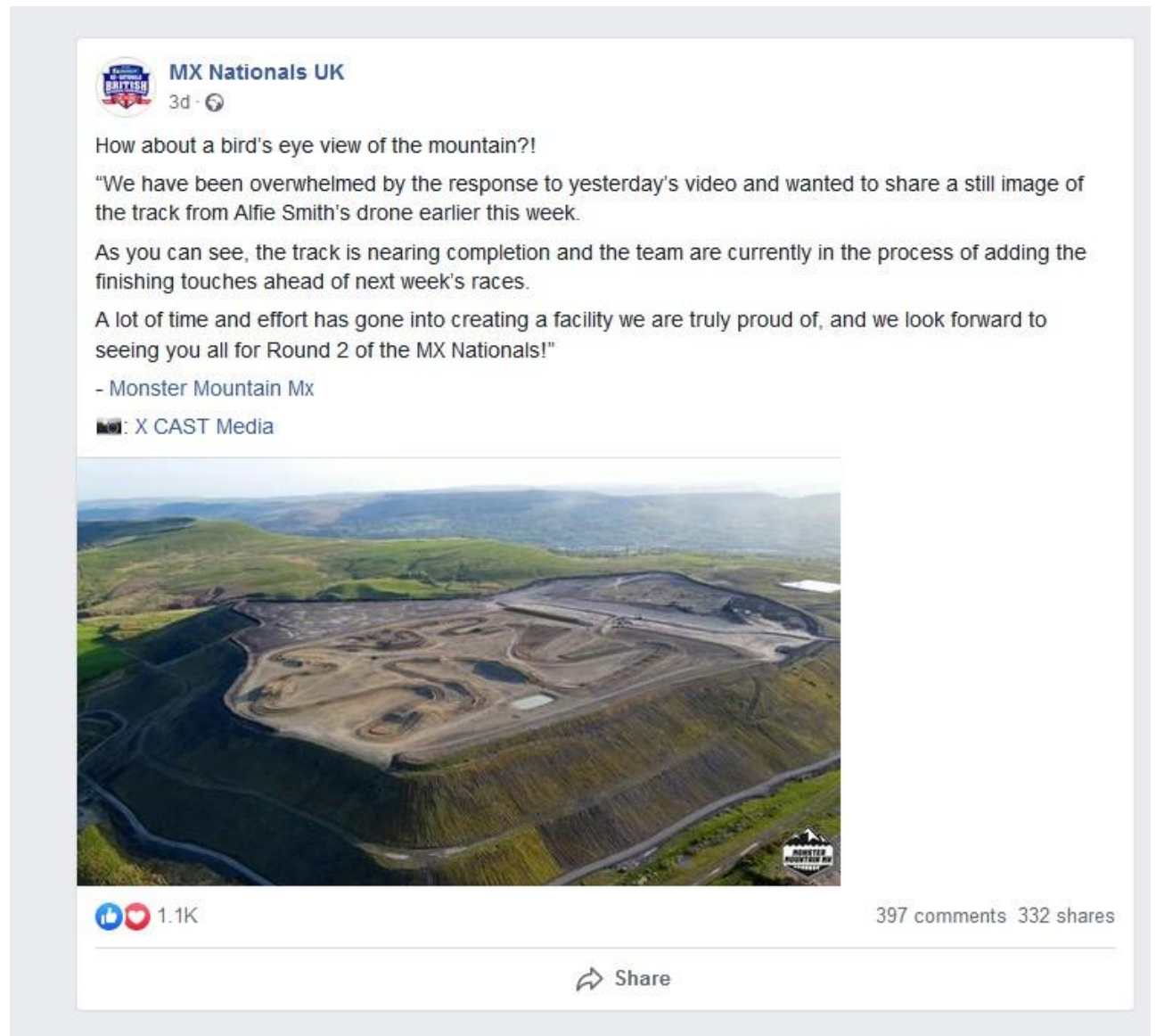
The Oxford Moto Parc track made its debut in 2022 and is back on the calendar, joined by Cusses Gorse and Hawkstone Park.

Round 1 – 11-12 March – Oakhanger, Hampshire

Round 2 – 6-7 May – Monster Mountain MX, Merthyr Tydfil

Round 3 – 3-4 June – Preston Docks

Chris Austin



From: Cross, David [mailto: [REDACTED]]
Sent: Friday, May 19, 2023 5:21 PM
To: 'Chris Austin'
Cc: Jones, Judith (Planning & Neighbourhood Services); dawn.bowden@assembly.wales; [REDACTED] Sammon, Declan (Councillor); Gibbs, Kevin (Councillor)
Subject: RE: Today's photo's from Ffos y fran [NOT PROTECTIVELY MARKED]

Dear Mr Austin,

Thank you for your email and photographs of the operations taking place at the site. Can I assure you that we are actively investigating the breaches in planning control and that enforcement action will be taken. I have also personally undertaken a number of site visits as part of our investigations. However, due diligence also requires us to review other matters as well, which is not limited to just the continued coal extraction and requires us to review any other potential planning breaches that may occur, for example the operations you have identified on the overburdens.

Kind regards

David Cross

From: Chris Austin <[REDACTED]>
Sent: 16 May 2023 12:22
To: Cross, David <[REDACTED]>
Cc: Jones, Judith (Planning & Neighbourhood Services) <[REDACTED]>
dawn.bowden@assembly.wales; [REDACTED] Sammon,
Declan (Councillor) <[REDACTED]> Gibbs, Kevin (Councillor)
<[REDACTED]>
Subject: RE: Today's photo's from Ffos y fran [NOT PROTECTIVELY MARKED]

Hi David,

they are still extracting and processing coal at Ffos-y-fran.

It is now 18 working days/22 elapsed days past the date that the MTCBC planning committee rejected the mining company's application to extend the working period of their coaling operation.

At the planning meeting you promised 'prompt' action, and latterly you said that you would be meeting with the company to discuss their alleged illegal activities. Has that meeting occurred and will you be implementing enforcement action? If not, could you please tell me when the meeting is planned for, and how long your enforcement legal 'due process' is expected to last? We are fast approaching the 9 months extension (since 6th September 2022), of operations that the company initially requested and subsequently had that request rejected by a publicly elected body.

Each day around 1,500 Tonnes of coal are extracted, processed and transported by road and rail to their customers for incineration. Global coal prices have recently fallen to around £165 Per Tonne but that is still a turnover of £247,500 a day. Also, the mining of and burning of this coal is responsible for thousands of tonnes of extra CO₂ into the atmosphere at a time of climate emergency.

Here are a few photo's of today's activities at the Cwmbargoed Disposal Point (CDP) which clearly shows coal lorries delivering coal for processing at the coal washery. These lorries have driven from the Ffos-y-fran mine along the haul road to the CDP. The lorries are arriving just minutes apart.

I was spoken to today by operations/security staff from the company who said that I was distracting his drivers by taking photo's. I am sitting in my car on a public road/on public property taking photo's through the side window, so no distraction involved whatsoever. I am

sitting alongside a busy road with heavy traffic flow since the A465 twinning works kicked in, so there are far greater distractions than me about. I think that perhaps they are getting edgy about someone taking photo's of their illegal activities and there may be an element of intimidation creeping in.

Also, the work on top of OB3 continues. What was just a rough haul/road to the top is now a lovely metallised access road that could be used by ordinary road vehicles.

Chris Austin

From: Cross, David [mailto: [REDACTED]]
Sent: Tuesday, May 16, 2023 10:18 AM
To: 'Chris Austin'
Subject: RE: Todays photo's from Ffos y fran [NOT PROTECTIVELY MARKED]

Dear Mr Austin,

Thank you for your email and the attached photos.

Kind regards

David Cross

From: Chris Austin < [REDACTED] >
Sent: 11 May 2023 12:28
To: Cross, David [REDACTED]
Cc: Jones, Judith (Planning & Neighbourhood Services) [REDACTED]
dawn.bowden@assembly.wales; Sammon, Declan (Councillor)
< [REDACTED] > Gibbs, Kevin (Councillor)
< [REDACTED] >
Subject: Todays photo's from Ffos y fran

David,

they are still moving coal into the depot and moving it out to their suppliers. There was a train in today with 20 75Tonne trucks attached, so another 1500 Tonnes of coal processed with no planning consent to do so.

Also, I thought I'd take some coal-by-road shots to demonstrate that this is also still carrying on with their supplies to Cemex cement plants in the Midlands. That would add another 50,000 Tonnes per annum (if they are sticking to the legal limit stipulated in their planning consent!).

Chris Austin
