

CYNGOR CYMUNED CWMLLYNFELL COMMUNITY COUNCIL

**MINUTES OF THE EXTRAORDINARY MEETING HELD AT
CWMLLYNFELL HALL ON THURSDAY 23rd APRIL 2015 AT 8.30P.M.**

PRESENT: Councillor R M Davies (Chairman) presided
COUNCILLORS: D Lloyd, T H J Kendrick, D C Phillips, N L A Price, J C Rees, and S Williams.

ATTENDING: Councillor A N Woolcock - Neath Port Talbot County Borough Council

176. APOLOGIES FOR ABSENCE

Apologies for their absence were received from Councillor M Evans, R Evans, R P Morgan and D B Thomas.

**177. PLANNING APPLICATION NO: P2012/1073 – EAST PIT EAST REVISED
OPENCAST COAL SITE – REPORT OF THE HEAD OF PLANNING - NEATH
PORT TALBOT COUNTY BOROUGH COUNCIL**

The meeting had been convened in order to review the Council's comments on the above planning application in light of the report of the Head of Planning, Neath Port Talbot County Borough Council which had been published and which would be considered at a Special Meeting of the County Borough Council's Planning Committee on the 28th April 2015.

It was noted that the Head of Planning was recommending approval of the application subject to an agreement being entered into by the applicants under section 106 of the Town and Country Planning Act, which included community benefits. The recommendation also stipulated some 134 conditions that should be imposed in respect of the site.

Resolved that:

1. the Council's objection to the planning application be reaffirmed and that the County Borough Council's Planning Committee be urged to refuse the application for the reasons indicated in (i) and (ii) below;
2. if however the Planning Committee is minded not to refuse permission it be requested to defer consideration of the application for the reasons indicated in (iii) below.
 - (i). The Council is of the opinion that the appraisal of the application is fundamentally flawed. Currently the legal interests in the site are too convoluted for any credence to be placed on the undertakings that have been provided particularly as the grant of planning permission depends on a section 106 agreement being entered into. The planning application indicates that the applicant is "The Lakes at Rhosamman Ltd" but whilst the report refers to the generic term "applicants" it appears that all discussions and negotiations have been with the owners and or their agents namely "Oak Regeneration" and their subsidiary "Pine" and also with the operators Celtic Energy. This anomaly is deeply concerning and brings into question the references in the report which state "the provision of a bond by the applicant was confirmed upon first submission of this application" and "this has resulted in the need for a figure of £23,000,000 to be deposited by the applicant as a financial guarantee for the site". The applicant Lakes at Rhosamman Ltd is however

listed as a private limited company that deals with the “management of real estate on a fee or contract basis”. The latest deposited balance sheet of that company shows current assets of only £200. This situation is anomalous and incongruous. As such it is questioned whether the applicant will provide a bond. Whilst the recommendation states that the arrangements for a bond will be the subject of a section 106 agreement the report does not indicate what the terms of that agreement will be and who the parties to it will be so it is impossible to assess the effectiveness of the agreement. The doubt that this situation causes is compounded by the fact that the promised community benefits are to be paid by the operators Celtic Energy. It should be remembered that Celtic Energy entered into a section 106 agreement in respect of the 2004 permission, which included undertakings in respect of restoration. Celtic Energy has and continues to be in breach of that agreement. It is also noted that the proposed bond is to be secured via phased payments which brings into question the reliability of the arrangement and whether the proposed bond arrangement is sufficiently secure. The liability of the restoration costs exist at present so any bond arrangement should be in place before any further development is undertaken. The statements that are made in the report that the owners and the operators could enter into voluntary liquidation also raises serious questions about their commitment. The imponderables that emerge further raises scepticism in local communities about the perceived dishonourable way that Celtic Energy has acted in failing to fulfil its obligations under the 2004 planning permission despite the categorical assurances that were given at the public inquiry that was held at that time. This failure has been compounded by Neath Port Talbot County Borough Council’s inability to control the working of the site in accordance with the conditions that were imposed. If the applicant/owners/operators are honourable in their intentions they should regularise the situation so that one legal entity is responsible for all aspects of the site.

- (ii). The planning appraisal of the proposed development is also deeply flawed as the assessments that have been undertaken in pursuance of Minerals Planning Policy Wales and Mineral Technical Advice Note 2 have reached the wrong conclusions for various reasons which are referred to in part below. Furthermore the assessment has placed undue emphasis on the effects of the outline aspects of the application (namely the hotel, holiday lodges, campsite, visitors centre and dive centre). These proposals are all reserved matters which are unlikely to form part of the section 106 agreement and may never come to fruition. As such they cannot be material considerations in the assessment of the application. The following are examples of references in the report to relevant Planning Policies and/or the Mineral Technical Advice Note and corresponding comments made on behalf of the Community Council to demonstrate where the appraisal of the proposed development is flawed:

<u>Reference to Relevant Policy or Advice</u>	<u>Comment</u>
There is a requirement to apply the precautionary principle in relation to mineral working;	This requirement has not been met as the recommendation to approve disregards the damaging effect and possible implications of the “restoration” proposals;

Reference to Relevant Policy or Advice

One of the aims of MPPW in relation to mineral working is to secure restoration and aftercare to provide for appropriate and beneficial after-use without compromise

Two of the key principles of MPPW in relation to mineral extraction is to:
Limit the environmental impact of mineral extraction and
Achieve high standard of restoration and beneficial use;

MTAN2 reinforces the issue of a 500 metre buffer zone which can only be ignored in exceptional circumstances;

Comment

The premise of allowing restoration which includes abandoning a massive void which will be allowed to fill with water is based entirely on compromise. There is no demand for the proposed after-use and it prevents the after-use that is associated with returning the site to common land. The restoration proposals are in direct conflict with the 2004 permission

Neither of these principles would be achieved by allowing the void to be formed into a lake/reservoir. The water filled void could have a serious environmental impact if any part was breached. The proposed restoration measures could not be described as being of a high standard as they are considerably limited when compared to the 2004 permission as the contours and landform that were a requirement of the 2004 permission will not be achieved which would be to the detriment of the environs of the site. In any event, the proposed after-use is the subject of an outline application only without any proof of demand or guarantee that it would come to fruition;

The report does not provide a cohesive argument that an exception should be considered as it relies totally on only one of the 7 factors mentioned in paragraph 49 of MTAN2 namely that it is considered that the proposal is of overriding significance for the regeneration, employment and economy of the local area. The 3 arguments that have been have relied upon are misleading in their emphasis (Pages 72 & 73). The assessment is over reliant on the fact that the buffer zone prescribed in the UDP was 200m and omits to refer to the relevance of Policy M2 in the Deposit Local Development Plan which states that surface coal operations will be considered unacceptable in principle where they are within 500 metres of a settlement.

(iii). The Planning Committee may be aware that on the 22nd April the National Assembly for Wales conducted a debate and voted in favour of a motion which called on the Welsh Government to:

- a) instigate a moratorium on opencast mining across Wales, in order to ascertain whether planning law and current guidance provides sufficient protection for communities affected by opencast mining;
- b) respond to the Research into the Failure to Restore Opencast Coal Sites in South Wales, stating specifically how it might address concerns about the workability of MTAN2 and the 500m buffer zone; and
- c) support affected local authorities to make legal challenges, where required, when pursuing restoration.

In response to the motion Mr Carl Sargeant AM, the Minister for Natural Resources referred to the fact that the report on the Research into the Failure to Restore Opencast Coal Sites in South Wales that he had commissioned includes a recommendation for a review of MTAN 2 in relation to the accumulation and management of bonds. He confirmed that he intended to undertake a focused review on these elements to ensure that, during the course of an operation, there is not a greater liability than the value of the bond at any time. He also indicated that he had met with the Coal Authority and confirmed that he will be asking them to prepare further detailed guidance on assessing restoration liabilities, risks and bonding arrangements on active sites. He commented that MTAN 2 is also clear that the track record of an operator should be taken into account when considering extensions to sites. It is abundantly clear that Celtic Energy's track record is deplorable and as such the Planning Committee would be guilty of a dereliction of duty if it were to grant planning permission before the Minister completes his review.

The Minister referred to the fact that the Welsh Government will continue to support local authorities to deliver their planning services including making legal challenges where necessary. It is therefore incumbent on Neath Port Talbot County Borough Council to engage fully with the Welsh Government.

The Minister made reference to the fact that the flawed business model that had resulted directly from privatisation was now apparent, particularly as the market for coal has declined. He therefore pledged to demand that the UK Government resolves the situation that privatisation has created. This matter is already the subject of representations initiated before Parliament was dissolved by the MP for Bridgend Mrs Madeline Moon. The Minister referred to the fact that the Well-being of Future Generations (Wales) Bill would soon become an Act, which would balance the needs of communities, the environment and the economy. As opencast clearly impacted on all three he confirmed that the Welsh Government needed to find a way forward that takes proper account of the jobs that the industry provides, the needs of local communities, and the protection of our landscapes. He would therefore be convening a summit for the key stakeholders shortly, with a view to developing a very distinct Welsh opportunity and control around opencast

The meeting terminated at 9.08 pm