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05<sup>th</sup> April 2024

Submission of written evidence to the CCEIC to aid its short inquiry on the Ffos-y-fran opencast coalmine and related issues.

## Background:

CAN has produced a [timeline of key events](#) in the Ffos-y-fran coal mine, leading up to the 23<sup>rd</sup> October 2023. On the 12<sup>th</sup> September 2022, just 6 days after planning permission ended for coal mining at Ffos-y-fran, local residents sent the first reports to Merthyr Tydfil County Borough Council (MTCBC) that Merthyr (South Wales) Ltd was breaching planning control and continuing to mine illegally. MTCBC proceeded to ignore many subsequent reports and photos of mining activities and coal transports over the following months, and rejected many calls for planning officers to visit the coal mine to see it for themselves. Finally, MTCBC admitted that illegal mining was indeed occurring only after Coal Action Network on 30<sup>th</sup> January 2023 sent Coal Authority statistics to MTCBC showing normal coal production was continuing—and even then, this was admitted only 2 months later on 31<sup>st</sup> March 2023 and after CAN followed up.

Nevertheless, MTCBC took no action to enforce planning control at Ffos-y-fran until some weeks after the unanimous vote refusing permission for the coal mine in April 2023, when it eventually issued an [enforcement notice](#). We asked MTCBC to issue a stop notice that would end the ongoing coal mining whilst the coal company appealed the enforcement notice, as this can take many months to resolve. MTCBC refused, and in July 2023, the Julie James wrote to MTCBC “I am aware that coal extraction continues at the site, which could constitute a breach of planning control, depending on the outcome of the appeal proceedings. Such coal extraction can continue in the absence of a stop notice accompanying the enforcement notice. I would be grateful if you could outline why your authority did not consider it expedient to serve a stop notice under section 183 of the Town and Country Planning Act 1990 (“the 1990 Act”) in this case.”. Yet neither the Welsh Government nor MTCBC at any point in the 16 months of illegal coal mining at a volume averaging 1,000 tonnes/day issued a stop notice.

This effectively gave Merthyr (South Wales) Ltd a de facto extension that was 7 months longer than the original 9 months that the company applied for. The reason that the Council refused to issue a stop notice, according to [Ministerial advice](#) (29/07/2023, obtained under FOI) was:

“attempting to progress the restoration through the company has been one reason why they did not serve a stop notice.

1. The plant at the site is all leased and once removed from the site would be costly to bring back.
2. Other reasons include wanting to avoid an immediate loss of 150 jobs.
3. The other reasons are the cost of securing the site to prevent trespass into unsafe surface workings,
4. the maintenance of the two water pumps which prevent the void from filling and



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5. the cost of a hydrogeological study to understand the safety consequences of the void filling.

After Coal Action Network initiated a judicial review challenge to the MTCBC's and the Welsh Government's continuing refusal to issue a stop notice, Merthyr (South Wales) Ltd suddenly claimed in August that it needed to continue mining coal until November 2023 to excavate old mine working that would make the void safer. Our legal team found those claims to be without substantiated evidence and the Coal Authority did not ratify the case made by the company to our knowledge, but MTCBC again acquiesced to the company's demands and accepted that it could continue its breach of planning control until the end of November, which coincided with the end of the company's contract with its primary customer, TATA Steel. That undermined our judicial appeal, as the judge accepted that despite the company's track-record, it would indeed stop at the end of November 2023, so we were forced to withdraw our judicial review. At the end of November, Merthyr (South Wales) Ltd withdrew its appeal to MTCBC's enforcement notice and claimed to finish coal mining, but this wasn't verified by MTCBC to our knowledge, despite the company's track record. MTCBC gave Merthyr (South Wales) Ltd until the end of December (when the enforcement notice came into force) to move coal out of the mine that it claimed to have mined before the November-end deadline. However, MTCBC—in breach of its own enforcement notice—allowed the Merthyr (South Wales) Ltd to carry on transporting large quantities of coal off the site until a new deadline on 08<sup>th</sup> January (because it was purported that it was a wet winter), and after that date discarded that deadline or any future deadline, moving to a 'rolling weekly review' instead.

The almost unmitigated acquiescence of MTCBC and the Welsh Government to Merthyr (South Wales) Ltd, to keep the company on-site has failed to deliver the benefits hoped for, and instead facilitated 16 months of illegal coal mining at Ffos-y-fran, with no accountability and the following consequences:

- A larger void and overburden mounds, increasing restoration costs
- Mining [outside the permitted licence area](#) triggering a separate enforcement notice from the Coal Authority.
- A [rapidly flooding void](#) with pumps removed.
- No agreement to fund restoration works
- Over [500,000 tonnes of illegal coal](#), much of it transported to customers along rail tracks owned by Transport for Wales – the Welsh Government.
- Over 1.6 million tonnes of CO<sub>2</sub>
- [362 additional deaths](#) from climate change related causes
- Dust & noise for locals

MTCBC and the Welsh Government were warned - in detail - of these consequences during its months of inaction by local residents, Coal Action Network (and its partner, Good Law Project, and legal team, Richard Buxton Solicitors), and Friends of the Earth Cymru. XR Cymru blockaded illegal coal being transported off the site for 24 hour in July 2023—preventing the illegal activities for longer than either MTCBC and the Welsh Government managed at any point.

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## The financial and practical arrangements in place for the restoration of the Ffos y Fran opencast site;

Merthyr (South Wales) Ltd would have been aware of the end of planning permission (06 September 2022) when it took over operations at the Ffos-y-fran coal mine at the end of 2015, and its obligation to restore the site after that. Indeed in the company's [most recently published accounts](#) (to year ending 2021—the company was very late publishing these accounts under threat of being stricken off—and should have published more recent accounts but has not), it is stated: **“Full account has been taken for funding the restoration obligation in the future costs and cash flows”** and **“On completion of coaling, the site will be restored in accordance with the agreed terms of the reclamation project”**. However, in 2023, it became clear from MTCBC, and the majority-redacted [advice to Government Ministers](#) (28/07/2023, that “officials consider the company is likely to seek administration after this time [coaling], although alternatively they may seek to continue to restore the site as long as they can draw down money from the escrow account to fund the work.”.

A £15 million guarantee bond is in place in a joint escrow account to be drawn down to make the site safe (not intended to fund its restoration) in the event that the coal operator abandons the site/becomes insolvent. Accordingly, the mining company is hopeful that these terms can be changed so, even though it is not insolvent, it can claw back the £15 million that's currently beyond its reach with an alternative proposal to the [original 2007 restoration](#) it agreed to carry out, so that it continues to extract profit from the site even after the dereliction of its contractual duties.

A [Good Law Project investigation](#) found that since 2017, Merthyr (South Wales) Ltd funnelled cash out of the company to pay out £49.89m in dividends and royalties, while the restoration fund faces a shortfall of at least £60m (according to Merthyr Tydfil County

In a meeting between CAN, Good Law Project, Richard Buxton Solicitors, and Matrix Chambers of London, it was advised that Merthyr (South Wales) Ltd may have acted fraudulently in reporting that it intended to finance restoration and was in a position to do so, if it could be proven that the Director and company had no genuine intent to do so. However, no public body has indicated an interest in pursuing a prosecution on that, or any other, basis—despite the sums of money and material impact at stake.

Indeed, during the period that Merthyr (South Wales) Ltd should have started restoring the site by returning the overburden mounds into the void, it was instead enlarging the void by continuing to mine and move coal out of the void for at least 16 months, and profiteering further by [hosting national motocross events](#) atop one of those overburden mounds. When we raised this with MTCBC, and MTCBC subsequently queried the company about it, the Director accidentally emailed MTCBC on 25/05/2023 advising an employee to wash their hands of it by telling MTCBC that the land under that overburden mound had been



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transferred to a separate company and thus Merthyr (South Wales) Ltd had no access to it, in a move very similar to fellow mining company, Celtic Energy's (detailed below).

## **How restoration of opencast sites can be secured, and contingency planning in the event of insufficient funds being available to restore sites; and**

On 20<sup>th</sup> October 2023, Lisa Pinney (CE of the Coal Authority) and Carl Banton (Operations Director of the Coal Authority) wrote a [highly critical letter](#) to MTCBC, outlining its multiple failures that has acted to reduce the options available to restore the site – such as: *“Managing the restoration and associated public safety of an open cast mine following closure is a matter for the landowner and local authority. The meeting last week demonstrated there wasn't a robust plan for the site's closure, which could happen at any time. For example, there was no understanding of how rising water levels would be managed nor whether they could use the restoration bond that is held in escrow to manage site security if the operator went into liquidation. These are fundamental questions that should be understood at this stage.”*

The Welsh Government must step in and take responsibility for Ffos-y-fran site, which has escalated to the [currently filling void](#) as a result of its refusal to take action earlier, despite the clear evidence of MTCBC's ongoing failure to control the situation. The Welsh Government also has a historic responsibility as the body that approved the coal mine on appeal in 2005. Once in control of the site, the Welsh Government must deliver on the 2007 restoration scheme promised to the residents of Merthyr Tydfil – anything less would amount to a betrayal after 16 years of suffering air and noise pollution from the mine.

## **Discussion of the findings and recommendations from the Welsh Government report on *Research into the failure to restore opencast coal sites in south Wales (April 2014)* and whether these are still applicable.**

The report warned that Ffos-y-fran was in danger of insufficient funds, yet this wasn't acted upon. This is particularly surprising given that warnings about other sites in the 2014 report have since proved well-founded. Setting Ffos-y-fran in the context of a historical pattern leading up to some 6 years ago is important as it highlights that, in addition to the findings of the 2014 report, this should have been foreseen by Merthyr Tydfil County Borough Council and the Welsh Government.

The 2014 report found that East Pit and Margam Parc Slip opencast coal mines, operated by Celtic Energy Ltd, had insufficient funds held in an escrow account by Neath Port Talbot County Council to secure the agreed restoration schemes. Accordingly, Celtic Energy Ltd

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evaded its obligation to restore these sites, transferring ownership for £1 to a shell company in the Virgin Islands with no assets. What restoration has occurred at East Pit and Margam Parc Slip was largely limited to what the Councils had secured in escrow accounts, intended as a guarantee bond in case the company walks out, not to deliver the agreed restoration scheme. This amounted to £22.4 million (20% of the agreed scheme's cost estimated at £100 million) for East Pit, and £5.7 million (10% of the agreed scheme's cost estimated at £58 million) for Margam Parc Slip. The results have been described as a 'moonscape' by local residents over half a decade on. In March 2024, we spoke with residents living around East Pit and Margam Parc Slip and found out that these sub-standard restoration deals still impact them deeply, and prevent them moving on as the rest of the country moves on from the era of coal mining. You can watch our videos on [East Pit](#) and [Margam Parc Slip](#), or read our brief on [Margam Parc Slip](#).

CAN produced [an update report](#) to the 2014 Welsh Government report at the end of 2022, assessing the state of seven sites across South Wales that were flagged in the 2014 report. With exclusive photographic documentation within these sites, the report exposes the incomplete, hazardous, and poor state at sites where Councils claim restoration to be complete, as well as flagging renewed concerns for sites years behind their restoration deadline, and with restoration schemes looming ahead. Although webinars on this report were well attended by staff and Councillors of Councils invited in South Wales, NRW, the Coal Authority, and several Senedd members and Members of Parliament, a notable exception included Merthyr Tydfil County Borough Council, despite having had restoration concerns raised by local residents about Ffos-y-fran.