

# Restoration of opencast mining sites

August 2024



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# Restoration of opencast mining sites

August 2024



# About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:  
[www.senedd.wales/SeneddClimate](http://www.senedd.wales/SeneddClimate)

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## 1. Introduction

- 1.** The Climate Change, Environment, and Infrastructure Committee ('the Committee') agreed to undertake a focused inquiry into the restoration of former opencast mining sites in South Wales.
- 2.** The inquiry was triggered by issues arising from the closure of the last opencast mining site in Wales, at Ffos-y-Fran in Merthyr Tydfil, during 2023.
- 3.** During that period, the Committee entered into an exchange of correspondence with the responsible Cabinet Secretary in relation to the continuation of coal extraction at the Ffos-y-Fran site, despite the operator's licence having come to an end. This correspondence is included at Annex A of this report.

### Terms of Reference

- 4.** The terms of reference for our work were to consider:
  - the financial and practical arrangements for the restoration of the Ffos y Fran opencast site;
  - how restoration of opencast sites can be secured, and contingency planning in the event of insufficient funds being available; and
  - 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 still apply.

### Our Approach

- 5.** The Committee held evidence sessions with a range of stakeholders on 24 April, 9 May, and 22 May 2024. The Committee also received written submissions, which are available on the [Committee's website](#).
- 6.** The Committee invited Merthyr Tydfil County Borough Council to attend a meeting to discuss issues relating to the Ffos-y-Fran site. At first, the Council declined the invitation. We were pleased that the Council reconsidered and attended the Committee's meeting on 22 May. The Committee also extended an

invitation to the site operator, Merthyr (South Wales) Ltd, which was declined. Instead, the site operator issued a written statement, which is reproduced in full later in this report.

**7.** The Committee would like to thank all those who contributed to its work.

## 2. Opencast mining in Wales

- 8.** Opencast (or surface) mining is a quarrying technique where coal seams relatively near the land's surface are exposed by excavating the overlying rock. The rock lying over and under each seam (the 'overburden' and 'interburden') is excavated and stored nearby, exposing coal seams (including those that would be too thin to remove by deep mining) to be extracted. Capital and working costs are lower for opencast than underground mining. At the end of the working life of the mine, the site is restored by filling it with the overburden.
- 9.** As with deep mines, the number of opencast sites has steadily declined since the 1960s. Despite this, several million tonnes of coal have continued to be extracted annually in the UK through opencast mining over the last decade.
- 10.** Due to its rich coal seams, south Wales has seen numerous opencast sites of varying sizes over the years. However, following the closure of the Ffos y Fran opencast site in late 2023, there are no active opencast sites in Wales.

### Welsh Government's position on opencast mining

- 11.** The Welsh Government's position on opencast mining is set out in [Planning Policy Wales](#), which says:

*"Proposals for opencast, deep-mine development or colliery spoil disposal should not be permitted. Should, in wholly exceptional circumstances, proposals be put forward they would clearly need to demonstrate why they are needed in the context of climate change emissions reductions targets and for reasons of national energy security."*

- 12.** The Welsh Government has [expressed concerns](#) about the historical UK Government privatisation arrangements, highlighting disappointment about the ten-year immunity from bond requirements that was instituted. The then Minister for Climate Change, Julie James MS, stated the:

*"... culture this has emboldened has had a profound effect on the ability of public bodies to secure sufficient funds and safeguards to deliver full restoration"*

and

*“there is a lack of funding affecting sites that will mean difficult and unsatisfactory decisions will need to be made about revised restoration plans.”*

## **The Welsh Government’s 2014 report**

**13.** In April 2014, the Welsh Government published Research into the failure to restore opencast coal sites in South Wales (the “2014 report”). ERM was commissioned to explore risks relating to inadequate restoration and the reasons for such failures. The research sought to identify where the bond or surety held by the local planning authority fell short of the level required to restore a site in accordance with the planning permission, should the site be abandoned or left unrestored.

**14.** Ten active sites were identified. In addition, four restored (but in aftercare) sites and three sites with pending planning applications were considered. Four sites (Glan Lash, Nant-y-Mynydd, Bwlch Ffos and Selar) were not considered significant risks. However, five larger sites (Ffos y Fran, Tower, Nant Helen, East Pit and Margam) were at risk of having insufficient bond cover at some stage of their operating life. The “smaller but significant” Dynant Fawr site had been “effectively abandoned in an unrestored state”.

**15.** The study found that bonding and other mechanisms to secure restoration had been applied inconsistently. The funds that had been accrued for some sites fell short of the financial liabilities associated with restoration and aftercare in accordance with the agreed planning conditions.

## **Recommendations from the 2014 report**

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**16.** The Report recognised that designing, accumulating, holding, and releasing a bond is a specialist and resource-intensive activity. It called for the establishment of a virtual “Centre of Excellence” to provide a pool of specialist services for Welsh restoration planning and bonding, based on international best practice.

**17.** For sites at risk of not being restored in accordance with planning conditions, the Report suggested other measures may be needed. These could

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include redesigning site restoration plans or changing after-use to generate greater residual site value. For such sites, it recommended reviewing restoration and aftercare proposals to test whether alternative solutions could be implemented at a lower cost.

**18.** The Report recommended reviewing Minerals Technical Advice Note 2: Coal (MTAN2) to identify where policy guidance could be adapted to ensure that, in future, restoration bonds are robust, consistent, and appropriate.

### **Coal Authority best practice guidance**

**19.** In February 2016, the Coal Authority, on behalf of the Welsh Government, published [best practice guidance on restoration liability assessments for surface coal mines](#). The purpose was to inform the interpretation of Planning Policy Wales and MTAN2, aiming to:

*“highlight, address and prevent the potential risks that could lead to the abandonment of surface mines prior to completion. It aims to ensure that sufficient security arrangements are in place so that the public purse and impacted communities are protected against a situation whereby the Operator is unable to complete restoration.”*

**20.** The three key recommendations in the guidance were:

- Surface coal mines should have an annual restoration liability assessment to ensure the liability is fully secured.
- The assessment should be led by an independent expert assessor appointed by the local authority and funded by the Operator. They should calculate the cost of restoring the site to the planning permission and [Section 106 conditions](#).
- The local authority will determine the level of risk it is willing to accept.

### **Coal Action Network report - 2022**

**21.** In December 2022, the Coal Action Network published a report on Coal mine restoration in South Wales. It covered seven of the opencast mines

examined in the Welsh Government's 2014 study (East Pit, Ffos y Fran, Glan Lash, Margam, Nant Helen, Selar and Tower). The research was primarily desk based but also included in-person site visits in September 2022. It made several recommendations:

- A fresh and independent assessment is needed to cost proper remediation of poorly restored and unrestored opencast coal mines in south Wales. The Welsh and UK Governments must provide those funds to secure the restoration promised to local communities. A well-resourced and supported taskforce is needed to facilitate this and see restoration works through to completion.
- Key restoration decisions must be led by local communities and guided by the independent advice of Natural Resources Wales (NRW).
- Coal tips should be addressed together with voids remaining from opencast coal mining, rather than approached in isolation.
- In the interests of transparency and accessibility, all planning authorities should make all Planning Officers' reports available online and clearly identifiable alongside associated planning documents.

## Our view

The closure of Ffos-y-Fran at the end of 2023 marked the end of the latest chapter in south Wales' complex relationship with coal. While the coal industry has historically brought economic benefits to the south Wales valleys through job creation, it has undoubtedly left deep scars on the landscape and communities.

Although this is the end of the latest chapter, it might not be the last. The Welsh Government's current position leaves the door open for coal extraction in exceptional circumstances. Furthermore, a future Welsh Government could potentially reverse its position and reopen coaling opportunities in the south Wales valleys. This Report, therefore, aims to serve two purposes: to examine the mistakes of the past, and to look to the future, to learn lessons to avoid repeating the same mistakes.

The Welsh Government must ensure that policies relating to mining are robust and up to date to provide appropriate protections for local authorities and communities. As we have seen repeatedly with opencast coal mining, some rules were eventually strengthened and action taken, but too often, they could not be applied retrospectively and did not help the affected communities.

We share the concerns of contributors about the potential for coal tip remediation to lead to new coal mining operations. To prevent this, policies regarding coal tip remediation must be clarified and strictly enforced. The negative impacts arising from the opencast mining sector could easily be repeated in other industries, and we must safeguard against this.

Subsequent Chapters of this report will address matters relating to opencast mining, and the last chapter will consider the specific case of Ffos-y- Fran, the last opencast coal mine in Wales.

**Recommendation 1.** The Welsh Government must ensure that policies regarding opencast coal mining and other mining activities are robust, up-to-date, and provide appropriate protections for local authorities and communities.

**Recommendation 2.** The Welsh Government must clarify its policies relating to coal tip remediation with the aim of ensuring that the negative impacts of opencast mining are not repeated.

**Recommendation 3.** Planning Policy Wales says that coal extraction can be permitted “in wholly exceptional circumstances”, where the proposals “demonstrate why they are needed in the context of climate change emissions reductions targets and for reasons of national energy security”. The Welsh Government should clarify the criteria that must be used when assessing proposals in this regard.

## Nant Helen and Margam opencast sites

### **Nant Helen**

Consent for the Nant Helen site in Coelbren, Powys, was granted in 1998. Coal extraction was to be completed by 31 December 2018, and restoration by the end of June 2021. Following extraction proposed after-uses for the site were grassland and nature conservation areas.

The bond for the site was incremental, standing at £6 million in 2014, rising to £30 million by September 2017. In the 2014 report, the local authority expressed concern that if the company were to cease operating prior to the full bond being in place there would be insufficient funds to cover restoration – and there may be insufficient funds in any case.

The owners of the site were registered in the British Virgin Islands, leading to potential difficulties in taking enforcement action if needed.

### **Margam**

Original consent for the Margam opencast site (Celtic Energy) in Kenfig Hill, Neath Port Talbot/Bridgend, was granted in 1999, and ceased coal extraction in October 2008. All coal was extracted from the site, and the proposed after-use included agriculture, nature conservation, wetlands, and woodlands. The 2014 report states appeals and court proceedings were undertaken until late 2011, and that the position regarding enforcement was “complex”. The local authority held a £5 million restoration bond and, in relation to restoration, stated there were “potential problems although continuing discussion with landowner on other schemes – however no clear direction at this present time”.

The Coal Action Network report outlined that scaled down restoration of the site was completed in August 2018, with an aftercare period of five years. The original estimate for restoration was £58 million, but this was downgraded to a £5.7 million project. Pursuance of restoration was also delayed as Celtic Energy appealed to a Public Inquiry, then the High Court and Court of Appeal, all of which upheld the Council’s rejection of applications to extend the mine.

### 3. The historic failure to restore opencast coal sites

*“We have public bodies, Government bodies, in place to protect us from the excesses of these companies, and I'm afraid they've failed us— totally and utterly.”*

Chris Austin, Merthyr resident

**22.** Hugh Towns (Carmarthenshire County Council) identified the privatisation of the coal industry in 1994 as a primary factor behind the failure to restore opencast mining sites appropriately. Prior to privatisation, the government of the day would have underwritten restoration costs. With privatisation, these liabilities were transferred to private companies. He explained that “Those private companies didn't really have the means to deal with the restoration liabilities.”

**23.** Haf Elgar (Friends of the Earth) argued that the business model for opencast mining benefited private companies at the expense of public authorities and communities. Companies extracted significant profits from mining operations, yet the funds needed for restoration were never available. Alyson Austin (Merthyr resident) echoed this sentiment, saying “It seems to be a strategy that's well used by the mining companies...They make their money and then they plead poverty and they walk away”.

**24.** In its written submission, Climate Cymru told the Committee that former opencast sites across south Wales:

*“have not been fully restored, leaving residents with dangerous sites on their doorsteps, with pitiful compensation for the damage it has caused to their homes in many instances, and a lack of accountability engrained in the system to hold mining companies to account effectively.”*

**25.** Hugh Towns highlighted that none of the sites transferred to Celtic Energy Limited had bonding arrangements to ensure financial guarantees for restoration. The 2014 report had recognised the need for performance bonds to cover restoration liabilities. Without these financial guarantees, local authorities

struggled to compel operators to fulfil their restoration commitments. Hugh Towns suggested that if a company defaults, the bond money should be used exclusively for restoration, without the possibility of the company reclaiming it.

## Progress on site restorations

**26.** Hugh Towns noted that many opencast sites had been restored to some extent, albeit not in accordance with the original planning agreements. He said:

*“A lot of those have been completed... not to the profiles that people were anticipating, but they nevertheless have gone back to acceptable profiles.”*

**27.** He said the 2014 report acknowledged that compromises might be necessary for site restoration due to financial and practical constraints. While the restorations might be different from what was initially promised, in some cases, more modern restoration practices could lead to greater ecological benefits.

**28.** Hugh Towns referred to the Selar site as an example where a revised restoration package was negotiated to include sufficient bonding and a landform that works within its environment. He also referenced Margam (Parc Slip) and East Pit, where compromises involved leaving voids filled with water and preserving ecologically significant overburden mounds. However, he admitted these compromises were not ideal, saying:

*“The reality of the situation is that you either get a restoration of a type which can be funded by the developer, or you don't get one at all.”*

**29.** However, residents of Margam expressed a contrasting view of the adequacy of the restoration at Parc Slip:

*“We now have mountains where there were no mountains, a deep, dangerous water filled void where there was a pretty farmhouse and good farmland, rough tracks where there were two good cross valley roads. We have concrete car parks that should have been removed at the end of opencast activities. We have lost numerous footpaths across the valley, a village that was demolished, lost oak woodlands, species and habitats.”*



## Implementation of recommendations in the 2014 report and 2016 Guidance

**30.** In its written submission, Coal Action Network referred to the 2014 report, saying that:

*“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.”*

**31.** Carl Banton (The Coal Authority) explained that the 2016 best practice guidance recommendation for annual restoration liability assessments had not been implemented consistently. He referred to Tower as an example of a site where periodic assessments had led to noteworthy progress in site restoration.

**32.** In its written evidence, Merthyr Tydfil County Borough Council (MTCBC) said:

*“MTCBC is aware of the best practise guide on ‘restoration Liability Assessments’ for surface coal mines prepared in 2016. Overall, the principles set out in the document, which seek to reduce the opportunity for the site operator to abandon the site without carrying out the final restoration in accordance with the approved plans is supported. It clearly necessitates the need for appropriate expertise and where appropriate independent expert assessors. It also requires co-operation from the site operator who would bear the costs of any agreement to be secured. Unfortunately, this advice was not available when the planning application for Ffos Y Fran was considered in 2005, Planning permission was granted by the National Assembly for Wales and these principles do not appear to have been secured.”*

## Funding restoration

*“At Margam/ Parc Slip Opencast Site, the promised enhanced restoration plans never happened. Instead the local communities were forced to accept an alternative restoration which in fact, was no restoration. The so called alternative restoration of the site used £5.7 million of money - instead of the £40 million needed to restore the site properly as was promised.”*

Margam residents

**33.** Carl Banton acknowledged the significant shortfall in restoration funding at many sites. He clarified that funds held in escrow accounts for opencast sites are intended to cover the cost of site restoration. He noted, “The original thinking around that guidance was that that is the amount of money that should be held within an escrow account... if a company went into insolvency.” In response to a question, Carl Banton agreed that an independent review to reassess the restoration needs of non-operational sites could be beneficial but emphasised the cost of such a review. could be significant.

**34.** In its written submission to the Committee, Coal Action Network said:

*“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.”*

**35.** Merthyr residents made several suggestions about who should cover the costs of restoration, where a company reneges on the restoration agreement, saying:

*“The funding of work prior to 1998, and arguably after this date, should fall to the Coal Authority as it was Westminster that*

*decided on coal mines prior to devolution. Post devolution, and certainly in the case of Ffos-y-fran. A fall back position from this would lead to the Welsh government paying for the works as they were the authority who finally gave permissions for the Ffos-y-fran operation to go ahead after the proposal was called-in with a public inquiry and the minister passing the decision.”*

## **Our view**

The business model for opencast mining has, again and again, benefitted private companies at the expense of public authorities and communities. While site operators raked in substantial profits, there was apparently little money left when it came to fulfilling their obligations for site restoration.

In all cases documented in this Report, the restoration work has fallen woefully short of what was promised. We have seen companies, sometimes the same company, repeatedly cut and run without keeping their end of the bargain. Restoration failures have meant losses to the public purse amounting to hundreds of millions of pounds and have had a significant impact on local residents.

The Welsh Government’s 2014 report, made several valuable recommendations, including the need for robust performance bonds to cover liabilities arising from restoration commitments. In 2016, the Coal Authority’s best practice guidance recommended that the restoration liability should be reassessed annually. It also recommended that the cost of restoring the site to the planning permission and Section 106 conditions should be assessed by an independent expert appointed by the local authority and funded by the operator. We agree with these recommendations, which could have gone some way to providing a safety net and ensured that funds were available for site restoration.

Unfortunately, for many of the opencast sites documented in this report, these recommendations came too late to make a practical difference. The damage had been done, with agreements entered into years earlier that were unlikely to be revised unless both sides agreed to do so.

Notwithstanding this, some site operators later applied for extensions to their licences. This could have been an opportunity to reset the parameters of the agreements or negotiate the inclusion of the recommendations in new agreements. However, site operators often held local authorities over a barrel, with authorities facing a significant financial burden if operators walked away. This dynamic perpetuated a cycle of inadequate restoration.

Looking forward, we believe the Welsh Government should consider making the recommendations of the best practice guidance a statutory requirement and consider how they can be applied more broadly, particularly for coal-tip reclamation.

Finally, the Coal Action Network, in its 2022 report on coal mine restoration in South Wales, recommended an independent review to assess the shortfall of funding necessary to restore sites. We agree. The review should consider the funding needed to restore sites to an acceptable level, rather than necessarily being bound to the original planning conditions. The independent assessor should define “acceptable” in consultation with the local authority and local community.

At the same time, the Welsh Government should engage with the UK Government to determine how to address the funding shortfall. We believe this should include discussions and collaboration between the three tiers of government – the UK Government, Welsh Government and Local Government.

**Recommendation 4.** The Welsh Government should make the Coal Authority's best practice guidance recommendations into statutory requirements.

**Recommendation 5.** The Welsh Government must consider how the best practice guidance can be applied more broadly, particularly for coal-tip reclamation.

**Recommendation 6.** The Welsh Government must engage with the UK Government and Local Government to determine how to address the funding shortfall for site restoration.

**Recommendation 7.** The Welsh Government should commission an independent review to assess the extent of the funding needed to restore

opencast sites to an acceptable level. The independent review should consider what constitutes an “acceptable level” in consultation with local authorities and communities.

## East Pit and Glan Lash opencast sites

### East Pit

The East Pit East revised site (Celtic Energy) in Gwaun-Cae-Gurwen, Neath Port Talbot, was granted consent in 2004. Completion of coal extraction was due in November 2012, with backfilling of the site by May 2015. Proposed after-uses for the site included general mountain and common grazing, improved agricultural land and scattered woodland. Additionally, longer term plans included a country park and a lake hotel/lodges. The **2014 report** outlined the bond for the site (£3 million) was inadequate, and could potentially lead to difficulty in achieving full restoration – although this was dependent on the actions of the developer and landowner. The 2004 consent was preceded by many years of mining at the site – with it having been mined since the coal industry was privatised in 1994. Initially mining was to cease at the site in December 2001.

Coal Action Network undertook a site visit to East Pit in September 2022. The report from the visit indicated a large lake sectioned off with barbed wire fences, and a steep sided coal face visible above the waterline in some places. There was an abandoned Celtic Energy compound, with oil drums, a warehouse, offices, and rusted shipping containers containing industrial equipment.

### Glan Lash

The Glan Lash site (Bryn Bach Coal) in Llandybie, Carmarthenshire, was granted consent in January 2021. Following extraction of 21,500 tonnes of coal over a five-year period, restoration of the site was due to be completed in December 2017, with a five-year aftercare period to December 2022. The proposed after-use for the site was agriculture, woodland, and ponds. The 2014 report stated no restoration bond or surety was held by the local authority.

The Coal Action Network report explained that Bryn Bach Coal submitted an application to extend the site in 2019. The extension was **refused** in September 2022.



The Coal Action Network's September 2022 site visit revealed the coal washery owned by the company is situated close to the site, and that since planning permission had expired the washery had been importing coal from elsewhere and selling it on. It also indicated fresh excavation was visible, the fencing around the top edge had been removed and laid further back, and at least one of the diggers in the mine was warm from activity that day.

## 4. A lack of accountability

*“In our community, we have lost faith in both councils and the Welsh Government who failed to protect us against abandonment, even though all the warning signs were there, and then claimed impotence at properly providing and enforcing genuine restoration.”*

Margam residents

**36.** Several bodies play a part in relation to an opencast mine. The landowner and local authority are responsible for managing the restoration and public safety of the opencast mine after it has closed. Contributors raised concerns about accountability arrangements, with a lack of clarity about who was responsible for each aspect of the process.

**37.** Sue Jordan (former Cross-Valleys Group and resident of Swansea) described how she was passed “from pillar to post”, and this was also raised by Merthyr residents in their written evidence. They said:

*“We have found this one of the most difficult things to overcome; getting anyone to accept responsibility for anything when the legislation and Acts appear to clearly state that they are responsible has been extremely frustrating and mostly fruitless”.*

They suggested:

*“Clarification of the responsibilities of each of the public agencies in these cases needs to be provided so that we will know who does what, who has responsibility for what, who can apply enforcement action, when and how?”*

*This would at least include the Coal Authority, National Resources Wales, the Local Planning Authority, the Welsh Government, and the Health and Safety Executive public bodies. Other agencies with involvement in these cases also need to be identified and have their responsibilities clarified.”*

**38.** Carl Banton acknowledged a perception that the regulatory landscape was complex. He supported the idea of having an independent body to coordinate enforcement actions where appropriate. The Coal Authority had previously offered to undertake such a role for the Welsh Government on a cost-recovery basis.

### **Role of the Coal Authority**

**39.** In its written submission, Climate Cymru suggested the Coal Authority's statutory duty "to maintain and develop an economically viable coal industry" should be removed so that it better aligns with the Welsh Government's position on coal mining. This would allow the Coal Authority "to focus on areas that will benefit people and businesses, such as the proper restoration of coal mining sites and extraction of renewable/ geothermal heat from existing/ disused mines".

**40.** In response to a question, Carl Banton confirmed that the Coal Authority is a non-devolved body, but which works closely with devolved governments, including the Welsh Government. He did not believe that there was a conflict between the work of the Coal Authority and the Welsh Government's position on coal mining.

### **Local authority resources**

**41.** According to Hugh Towns, the 1996 reorganisation of local government in Wales dispersed specialist mineral teams across 22 authorities, meaning that the expertise available to local authorities had been diluted. He highlighted that only three experienced mineral planners remained in south Wales, all based in Carmarthenshire.

**42.** Hugh Towns noted that Carmarthenshire County Council had service level agreements (SLAs) with 12 other local authorities to provide minerals and waste planning advice. He highlighted the flexible and cost-effective nature of these agreements. He emphasised the benefits that would come from having a centralised technical support team, with appropriate resources.

**43.** Haf Elgar highlighted the issue of capacity and expertise within local authorities, particularly regarding minerals planning and enforcement. She

noted that while MTCBC had used Carmarthenshire's expertise, there was a general lack of technical specialism within local authorities. Daniel Therkelsen, Coal Action Network, added that councillors' lack of technical knowledge was a significant issue, making them heavily reliant on planning officers' reports.

**44.** David Kilner, Climate Cymru, emphasised the need for local authorities to have adequate resources to pursue legal challenges against site operators. He supported suggestions from Coal Action Network and Friends of the Earth that the Welsh Government should provide legal resources or support to local authorities where necessary. This was echoed by Merthyr Tydfil Heritage Trust, which called for the Welsh Government to intervene to make sure Merthyr Tydfil County Borough Council had the best possible support and advice in dealing with the site operator of Ffos-y-Fran and any potential revision of the restoration plan.

## Our view

Residents' groups and stakeholders identified a lack of clear accountability as one of the main problems they experienced in dealing with site operators and public authorities.

The responsibility for managing the restoration of opencast sites falls primarily to local authorities, with limited roles for the Coal Authority and Natural Resources Wales. However, the complexity of the system often results in confusion. Sue Jordan's evidence highlighted this, revealing a system where residents are passed "from pillar to post".

Transparency is essential to improving accountability. Addressing the confusion over roles and responsibilities requires clear guidelines to clarify who is responsible for each aspect of the process. These guidelines must be made accessible to the public.

We note that Coal Action Network's 2022 report recommended that planning authorities should ensure all Planning Officers' reports are available online and clearly identifiable alongside associated planning documents. We agree that this would be a useful step towards greater transparency and accessibility.

Local authorities have been and continue to be under considerable resource pressures, particularly in specialist roles. For example, only a handful of experienced mineral planners remain in south Wales, all based in Carmarthenshire. While the provision and use of Service Level Agreements has been valuable for several local authorities, we are concerned that the number of staff working in Carmarthenshire might make the service vulnerable. There needs to be an assessment of future need to ensure that staffing levels are appropriate.

The Welsh Government's 2014 report recognised the complexity of restoration planning, particularly in relation to bonds. It recommended establishing a virtual "Centre of Excellence" to provide a pool of specialist services for restoration planning. Looking to the future, we believe this proposal merits further consideration, especially in light of potential proposals around coal-tip reclamation. The Welsh Government should take the lead in exploring with local government how this can be taken forward.

We acknowledge the Coal Authority's significant role in Wales, including in conducting mine inspections. We note comments from contributors that the Coal Authority has a statutory duty to maintain and develop an economically viable coal mining industry. The Coal Authority told us this does not conflict with Welsh Government policies. However, we agree with contributors that it is timely and necessary to reconsider the Coal Authority's statutory duty.

In this report, we have discussed the irresponsible behaviour of various site operators. It is tempting to accept that "this is what private companies do"—a view expressed by several residents. However, we believe it is a mistake to accept this as a *fait accompli*. Different ownership models, including community ownership, should be considered, and potentially required for planning consent in the future. This approach could help ensure more responsible and community-focused management of opencast mining sites or similar operations.

**Recommendation 8.** The Welsh Government must clarify the roles of local authorities, the Coal Authority, and Natural Resources Wales in the restoration of opencast sites, with particular emphasis on their responsibilities in the decision-making process, and make this information publicly available.

**Recommendation 9.** The Welsh Government should require local authorities to ensure all Planning Officers' reports are available online alongside associated planning documents, including revised restoration plans, where relevant.

**Recommendation 10.** The Welsh Government must engage with local authorities to assess and meet the future staffing needs of local authorities for specialist roles such as mineral planners.

**Recommendation 11.** The Welsh Government should reconsider the proposal from the 2014 report to establish a virtual "Centre of Excellence" for restoration planning, particularly in light of potential coal-tip reclamation proposals, and lead discussions with local government on how to implement this.

**Recommendation 12.** The Welsh Government must engage with the UK Government with the aim of removing the Coal Authority's statutory duty to maintain and develop an economically viable coal mining industry.

**Recommendation 13.** The Welsh Government must consider making a degree of community ownership a requirement for opencast sites and similar developments, including coal tip reclamation sites.

## Selar and Tower Colliery opencast sites

### **Selar**

The Selar North site (Celtic Energy), in Glynneath, Neath Port Talbot, was granted consent in July 2010. The consent was granted for five years, with coal extraction to cease before August 2015. Following the extraction of 700,000 tonnes of coal, the proposed after-use of the site was mountain grazing, improved grasslands, woodland, wetlands with species enhancement, and management of a nature reserve. The 2014 report outlined the bond held by the local authority was £20m (to rise to £22m) and the local authority did not envisage any difficulties in achieving final restoration of the site.

The Coal Action Network September 2022 site visit indicated that restoration appears to be complete, with the site in aftercare. However, it also reported that oil drums were leaking hazardous antifreeze, and long dead saplings planted as part of the restoration scheme have not been removed and replanted, suggesting the area was not well attended during aftercare.

### **Tower Colliery**

The Tower opencast site (Tower Regeneration Ltd) in Hirwaun, Rhondda Cynon Taf, was granted consent in December 2011. A condition of the planning consent was that coal extraction was to cease seven years from commencement of extraction (March 2012) and restoration to be completed within eight years of the commencement of excavation.

After-uses for the site included agriculture, nature conservation and an environmental resource centre. Surety was in place for the site – an initial £4 million, with the developer then required to pay £500,000 in advance each month, until a total of £10 million had been paid. The 2014 report outlined a potential issue with restoration, with the local authority expressing concerns that the developer may wish to reduce the costs of the final restoration works, which may result in works of a reduced standard being implemented.

The Coal Action Network site visit report described ongoing restoration: a large, fairly level area of exposed soil with vehicles working on it, and a digger reprofiling a hill.



## 5. A failure of policy and legislation?

*“Failure to hold the multiple, publicly funded agencies to account when statutory provision is not followed appears to be more problematic than the statutory provision itself.”*

Swansea residents

**45.** The question of whether current policies and legislation are sufficiently effective was raised, with contributors expressing contrary views.

**46.** Hugh Towns acknowledged that some aspects of existing legislation are outdated. He suggested that MTAN 2, which was published in 2009, should be updated to reflect more recent legislative frameworks, such as the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015. However, he recognised that this might not currently be a priority given the Welsh Government’s position on coal mining.

**47.** Owen Jordan (former Cross-Valleys Group and resident of Swansea) explained that “The legislation is entirely adequate; just enforce it and make sure that, with the processes, there's enforcement”. Swansea residents expanded on this in written evidence:

*“The risks now posed from unrestored opencast coal sites (East Pit, Margam, Ffos y Fran), are, in the main, attributable to the statutory authorities’ failure, either severally or in co-operatively, to use the legislation available to them (The Coal Industry Act 1994, Coal Mining subsidence Act 1991, Mines and Quarries (Tips) Act 1969, Reservoirs Act 1975, Planning Act 1990) to effectively control both the site operations and the restoration. Care must be taken that any new legislation does not eviscerate existing statutory provision.”*

**48.** In their written evidence, the Merthyr residents group told the Committee that clarifying and improving accountability should be a priority, saying:

*“The public bodies, or agencies, that have responsibility in these cases are not using the powers that they already hold, so we*

*wonder what would further legislation achieve?...There may be legislation and guidance that needs amending, but having a clear path to challenge a public body and ensure that they exercise their responsibilities.”*

## Concerns about future coal tip remediation

**49.** Chris Austin pointed out that the remediation of coal tips by extracting incidental coal would, in effect, lead to new coaling operations. This would contradict the Welsh Government's stated policy position of “No new coal.” He raised particular concerns about a proposed site in Bedwas, in the Rhymney valley. He explained:

*“They will be remediating the tips by taking the coal out of them and using the coal to fund the operation... but it would turn into an opencast coal mine with an open-ended period of mining.”*

**50.** These concerns were echoed by Haf Elgar and others.

## Disused Tips (Mines and Quarries) Bill

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**51.** The Welsh Government has committed to legislate to strengthen the regulatory regime for disused tip safety through the Disused Tips (Mines and Quarries) Bill (‘the Bill’). The Bill is expected to be introduced in autumn 2024.

**52.** Haf Elgar expressed support for including opencast mines within the scope of the Bill. David Kilner agreed.

## Our view

The Committee heard from several contributors that the historic failures of site restoration were due mainly not as a result of legislative gaps but to an inability or lack of appetite to apply the existing rules robustly. Residents’ groups, in particular, felt frustrated that this failure has led to former opencast sites being restored inadequately.

Although the current Welsh Government has set out its position – that there should only be coal mining in exceptional circumstances - there is nothing to

prevent a future Welsh Government from taking a different stance. As such, it is essential to ensure that the appropriate legislative protections are in place.

In future, consent for new opencast mines would need to be subject to the provisions of the Infrastructure (Wales) Act 2024. The Act includes provisions aimed at improving consultation and engagement with local residents during the planning process. But it does not include provisions that would prevent a recurrence of the issues we have seen at Ffos-y-Fran and the other sites documented in this report. The Welsh Government must take steps *now* to ensure that the legislative framework is fit for purpose and aligns with environmental and sustainability standards. This is particularly important in the light of proposals for coal tip remediation.

We note that the Welsh Government's 2014 report recommended reviewing MTAN2. A decade later, MTAN2 has still not been updated. The Welsh Government must address this to ensure MTAN2 is fit for purpose, again in the context of proposed new developments, including coal tip remediation.

We acknowledge contributors' views that the forthcoming Disused Tips (Mines and Quarries) Bill presents an opportunity to include provisions for the restoration of former opencast sites. Although legislative provisions would not apply retrospectively and would not affect the sites detailed in this report, we believe there is merit in considering this matter further.

Finally, the Welsh Government has previously sought funding for coal tip remediation from the UK Government. Securing this funding would potentially mean less reliance on coal mining companies and exposure to the risks that come with that. The election of a new UK Government provides an opportunity to revisit these discussions.

**Recommendation 14.** The Welsh Government should review and update the Minerals Technical Advice Note 2 (MTAN2) to ensure it is fit for purpose, particularly in the context of new developments and coal tip remediation.

**Recommendation 15.** The Welsh Government should incorporate provisions for the restoration of former opencast sites within the forthcoming Disused Tips (Mines and Quarries) Bill.

**Recommendation 16.** The Welsh Government must proactively engage with the UK Government to seek funding for coal tip remediation.

## 6. Community involvement and consultation

*“We have always been treated by them as ‘the opposition’, or even ‘the enemy’, and we have been ignored, dismissed, marginalised, lied to, and misdirected...”*

Merthyr resident

**53.** Residents’ groups were unanimous in their criticism of public bodies’ approach to engagement and consultation. The Committee heard several suggestions about the reasons for this and how it could be improved.

**54.** Hugh Towns acknowledged that local residents often feel excluded from the decision-making process. Restoration plans presented during the planning application phase are subject to change, and detailed restoration proposals submitted later do not require public consultation. In reference to community involvement in the Selar site, he said there had been a liaison committee, including members of the county council, community councils, and residents, who were updated regularly about site activity. MTCBC also told the Committee that a liaison committee was in place for Ffos-y-Fran.

**55.** Alyson Austin stated that mechanisms for involving the community in the restoration process are already included in MTAN 2, but there was a lack of will to use them. Chris Austin echoed this sentiment:

*“I do believe that this is all in place and can be actioned, but there is no will whatsoever, certainly with our LPA.”*

**56.** Owen Jordan detailed his difficulties in communicating with the Coal Authority. He said, “The Coal Authority’s remit, as far as it extended, was for the protection of the mining interests of the mining company and nothing else, to the exclusion of everything else”.

**57.** In its written submission, Extinction Rebellion suggested that the Welsh Government or Senedd should consider:

*“funding of an independent Community Assembly in Merthyr to find the best way forward for people concerned about the short*

*and longer term future of the site and its workers. This should include the public bodies involved, as well as the owners and elected officials. Community Assemblies are a tried and tested way of bringing people together to hear from experts and from each other, share ideas and decide what to do locally on an important topic.”*

**58.** This was echoed by Climate Cymru, which called for the Welsh Government to set up a Citizens Assembly of “residents and campaigners of former opencast coaling sites to engage them on next steps in relation to ideas for the funding of restoration”.

## **Our view**

Hearing from residents about the impact these sites have had on their lives has been the most heart-rending aspect of our inquiry. People’s lives, health, well-being, and homes have been severely affected over many years, if not decades. As a Committee, we have nothing but praise for the dignity, diligence, and dedication they have shown for so long.

Earlier in this report, we talked about the importance of accountability and how it is facilitated by transparency. The disillusionment expressed to us by residents’ groups emphasises the need for improved communication and transparency. We note that, in the case of Ffos-y-Fran and other sites, liaison committees have been set up. However, it is clear this has not been enough to address concerns.

We believe a specific officer in the local authority should be designated to work as a point of contact for the local community. This person could provide a direct channel for communication between residents and local authorities. In addition, we believe local authorities should create online portals where residents can access up-to-date information on all stages of the restoration process. These steps go some way towards improving transparency.

We were told that local residents are often not engaged in discussions on revised restoration proposals. We were concerned to hear this. The Welsh Government must mandate public consultation for all stages of the restoration process, including where revised restoration plans are brought forward.

Contributors suggested citizens' assemblies as potential forums for discussing the future of sites. They would provide an opportunity for the community to decide collectively on the best way forward. We believe there is merit in this suggestion, particularly where there has been a failure to restore a site according to the initial permission and compromises need to be made. It is appropriate and desirable that the local community take a central role in such processes and this approach would enable that to happen.

The Welsh Government should consider these suggestions and the broader issues around community engagement when it reviews relevant policies and legislation, as recommended elsewhere in this report.

**Recommendation 17.** The Welsh Government must mandate public consultation for all stages of the restoration process, including when revised restoration plans are brought forward.

**Recommendation 18.** The Welsh Government should advise local authorities to designate a specific officer as a point of contact for the local community, providing a direct communication channel between residents and local authorities on matters relating to sites or similar developments.

**Recommendation 19.** The Welsh Government should advise local authorities to create online portals where residents can access up-to-date information on all stages of the restoration process.

**Recommendation 20.** The Welsh Government should encourage the use of citizens' assemblies as forums for discussing the future of restoration sites, particularly where restoration failed to meet the original planning permission and compromises need to be made.

## 7. Ffos-y-Fran – Wales’ last opencast mine

*“At the outset in 1990 local people in East Merthyr and Dowlais were given pledges by their local authorities. Yes, there would be noise and nuisance in the short term but after 20 years - 30 at most - the old coal and slag tips stretching from Penydarren near Merthyr Tydfil town centre right up to the top of the overlooking hills would be re-purposed to provide communities with much needed breathing space and an environment that encouraged the revival of biodiversity.”*

Merthyr Tydfil Heritage Trust

- 59.** The Ffos y Fran Land Reclamation Scheme was a major opencast coal mining outside Merthyr Tydfil. The site operator at closure was Merthyr (South Wales) Ltd.
- 60.** Starting in 2007, the scheme aimed to extract 10 million tonnes of coal over 15 years. Part of the revenue would be used to redevelop the current former industrial workings into residential and recreational use.
- 61.** The site licence expired in September 2022, and an application for a nine-month extension was filed with MTCBC. Local residents reported that the company continued mining the site after the licence had expired. MTCBC refused the extension application in April 2023. This led to the site’s closure at the end of November 2023.
- 62.** Following the decision to refuse the application, MTCBC issued an enforcement notice against the company. Coal Action Network asked the local authority to issue a “stop notice” to stop mining while the company’s appeal against the enforcement notice progressed. MTCBC refused, as did the Welsh Government. According to Ministerial advice in July 2023, Welsh Government officials discussed the case with local planning authority officers, and were told that discussions with the company about restoration were progressing .



## Incident response and preparedness

**63.** In October 2023, the Coal Authority wrote to the Welsh Government regarding the site's restoration. Key points included:

- Despite advice and support from the Coal Authority and others (including the Welsh Government), the Council had made little visible progress in preparing for the mine's closure or abandonment.
- There was no robust plan for the site's closure, such as managing rising water levels or whether MTCBC could use the restoration bond held in escrow for site security if the operator went into liquidation.

**64.** When asked about this, Ellis Cooper (Chief Executive of MTCBC) confirmed that a technical working group was established in response to the Coal Authority's concerns. The group involves relevant regulatory bodies. Judith Jones (MTCBC) added that the group meets monthly to provide updates on progress at Ffos-y-Fran, share information, and take necessary actions. Ellis Cooper highlighted improved information sharing and clarity of responsibilities as some of the key benefits arising from the group.

### Merthyr (South Wales) Ltd – Statement – 9 May 2024

Merthyr (South Wales) Ltd issued a statement on 9 May 2024 in response to the Committee's invitation to discuss matters relating to Ffos-y-Fran. The statement in full is reproduced here:

"Since the cessation of the mining operation in November 2023, Merthyr (South Wales) Limited continues to manage the Ffos-y-Fran site to comply with Health & Safety Executive guidelines under The Quarries Regulations 1999.

Post closure of the mining operation the Company selected personnel with some combined 250 years of surface mining experience to form the core of the sites C&M (Care & Maintenance) team. The C&M team are responsible for routinely monitoring all safety and environmental aspects of the site, including water levels and water quality.

The C&M team complete daily checks of the water quality to ensure the water discharges are within consent limits set by NRW (Natural Resources Wales).

This is supported with a quarterly water testing programme agreed with NRW. Water samples are tested by an accredited laboratory for a comprehensive suite of determinants. Results indicate there are no determinants that raise a cause for concern to the water environment.

All analytical data is either submitted to NRW or made available for inspection on routine site visits at their request.

Ground Water levels under the guidance of a consultant hydrogeologist, are being monitored on a regular basis, within the mine and are reviewed with NRW and MTCBC (Merthyr Tydfil County Borough Council)

Following one of the wettest winters on record ground water levels have stabilised around the levels monitored prior to commencing mining operations on the site.

Recent trend indicates a fall in water levels, this will be monitored throughout the summer months to establish if there is, as anticipated, a seasonal change in the ground water level, within the range previously monitored.

Therefore, ground water levels remain some 200 feet (60 metres) below the lowest natural ground level located to the North of the site.

Following consultation MSW have reached a formal agreement with MTCBC to commence an interim restoration programme of works for the site, which is due to commence in early May 2024.

MSW have engaged the services of several external consultants, specialists in their field, to prepare a revised restoration plan. MSW continues to discuss with MTCBC and all relevant key stakeholders progress on the revised restoration plan.

Therefore, it would be inappropriate to comment further until the revised restoration plan has been finalised and submitted to MTCBC for their consideration.”

## Restoration

**65.** A restoration plan for the site was published in 2015, saying that the restored site would consist of:

*“Urban common land for stock grazing, with public access for air and exercise. Bryn Caerau Farm will be returned to agricultural use, where disturbed, and nature conservation measures will be incorporated throughout the restoration scheme. The site will be predominantly restored to grassland and moorland vegetation associated with the open areas of the common.”*

**66.** David Cross (Principal Planning Officer at MTCBC) indicated that Merthyr (South Wales) Ltd (MSW) has the primary responsibility for restoring the site in accordance with the approved plans. Ellis Cooper acknowledged the challenging relationship with the site operator, involving legal actions to secure payment that had been committed to. Geraint Morgan (Solicitor at Merthyr Tydfil County Borough Council) explained that the original planning permission granted in 2005 required a £15 million bond and a £15 million parent company guarantee. He stated, “The £15 million bond and the £15 million parent company guarantee remained in place as at that time”, despite subsequent appeals and applications regarding the site's operations. Geraint Morgan noted, “It was always understood that that £15 million would not necessarily be sufficient to restore the site, but restoration is a matter for the developer to undertake”.

**67.** Geraint Morgan clarified that the £15 million intended for site restoration is held in an escrow account and is not directly accessible by the local authority. To draw down the money, certain requirements must be met, and it must be “signed by the developer and countersigned by the local authority”. The requirements include having an approved restoration strategy. The funds are strictly allocated for site restoration and cannot be used for other purposes, such as installing drainage pumps.

### Assessment of funds needed for restoration

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**68.** David Cross explained the difficulties in providing an accurate estimate for the restoration costs, given the need for additional information about the site's condition. Previous estimates had ranged from £50 million to £120 million, and

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this was due to incomplete data. He highlighted the difficulties the council has faced in obtaining accurate and comprehensive data about the site, often relying on information provided by the developer. This had, however, improved recently.

**69.** Chris Austin pointed out that the Welsh Government had previously estimated the restoration costs at around £50 to £60 million. He was concerned that a high estimate would make it more likely that the site operator would abandon the site, given that they had already claimed that the original restoration plan was unaffordable. This was reiterated in his written submission:

*“This figure of £125 Million is being used to argue that MSW cannot possibly afford the final restoration costs and therefore is driving the renegotiation of the final restoration plan/strategy, despite it being an unverified, unsubstantiated and inherently untrustworthy figure.”*

**70.** David Cross confirmed that annual restoration liability assessments, recommended by the Coal Authority in 2016, had not been implemented for Ffos-y-Fran. He explained the difficulty in retrospectively applying new guidance to the 2005 planning permission.

**71.** In response to a query about why the original bond had not been adjusted to reflect the more realistic estimate of £50 million identified in the 2014 report, Geraint Morgan clarified, “It wasn't open to anyone then to reopen the discussions as to how much money needed to be set aside in an escrow account or a bond”.

### **Site operator's financial status**

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**72.** Chris Austin highlighted that the mining company has claimed it cannot afford the restoration, despite making substantial profits over many years. He stated:

*“They can well afford it. When they signed up to buy this out, their contract says it's a land reclamation scheme, you put the land back, anything left over is yours, not vice versa”.*

He emphasised the need for transparency to understand the site operator's capability to fund the restoration.

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**73.** David Kilner raised concerns about the site operator potentially abandoning the site or declaring bankruptcy to evade its responsibilities. He questioned whether the Welsh Government and the Council were using all available tools to ensure financial accountability and urged the Welsh Government to pursue legal routes to recover the full restoration cost.

**74.** In response to a query, Geraint Morgan discussed efforts to verify the company's financial ability to fund the site's restoration, noting that the company's accounts indicated £74.5 million allocated for restoration.

**75.** In its written submission, Coal Action Network said:

*“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 Council). 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.”*

## **Application of the recommendations of the 2014 report**

**76.** In its written evidence, MTCBC commented on the application of the 2014 report in relation to Ffos-y-Fran. The Report had said “there are few remedies to enable the planning conditions to be met” in circumstances where “it is anticipated that the site operator might fail to restore the site, with an inadequate bond and limited success of enforcement”. These difficulties reflected MTCBC's experiences.

**77.** MTCBC referred to the “mitigation measures” outlined in the 2014 Report and explained how it had pursued such measures in relation to the site:

*“The submission of a revised planning application to extend the life of the mine, where additional contributions towards the restoration fund can be made. This was explored as part of a planning application to extend the life of Ffos y Fran for an additional 3 years. However, the application was refused as it ran contrary to national planning policy.*

*A new application for a revised after-use of the site to generate enhanced residual land values. In the case of Ffos Y Fran, the majority of the site is to return to common land. To date no alternative scheme has been presented to the local planning authority for consideration.*

*Major reconfiguration of the form of restoration for the site. A dominant cost component for the restoration works relates to the bulk earthmoving needed to replace the excavated overburden back into the void. Such costs could be reduced by partially infilling the void, reshaping the overburdens and could include part of the void being retained as a water feature. This is currently being explored at the Ffos Y Fran site, where the site operator is currently preparing the submission of a future planning application to vary the restoration strategy, which would likely involve the retention of some of the overburdens and a water body in the void.”*

## **Interim restoration work**

**78.** As set out earlier in this Chapter, the site operator and MTCBC agreed an interim restoration programme to commence in early May 2024. David Cross explained that 52 hectares of land were planned for interim restoration.

**79.** Geraint Morgan explained that the site operator has requested that the interim work should be funded from the escrow account. The request aligned with the criteria of the 2007 restoration agreement and revisions to the escrow agreement were being considered in light of the request.

## Revised restoration plan

**80.** In its written evidence, **MTCBC stated** it has been in discussion with the site operator “for some time” about developing a revised strategy for the remainder of the site. In its written submission, MTCBC told the Committee that it was exploring with the operator a reconfiguration of the form of restoration for the site. The operator was preparing an application to vary the restoration strategy, which would likely involve retaining some of the overburdens and a water body in the void.

**81.** In its written submission to the Committee, Merthyr Tydfil Heritage Trust explained that any revised restoration plan should include all the main objectives of the restoration plan from 2007. This should consist of: “safe public access across the East Merthyr historic landscape with a new network of trails and footpaths; sustainable wildlife habitats and biodiverse environmental sites; protection and restoration of surviving heritage features – including the old railway track bed from Cwmbargoed to Dowlais; and the return of most of the site for traditional commoners’ use”.

## Issues with the site

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**82.** Several contributors, including the local residents, raised concerns that the voids at the site had been allowed to fill with water. Alyson Austin expressed deep concerns about the safety of the water-filled void, saying:

*“We don't know if that water is leaching. We don't know how toxic it is. We don't know if that water then will get into the water table”.*

**83.** Carwyn Morris explained that hydrologists had been monitoring the body of water at the site. He reassured the Committee that the water level was well below the threshold that would cause flooding.

## Community involvement

**84.** Geraint Thomas (Leader of MTCBC) said that the council's engagement with the public follows planning requirements, with opportunities for consultation limited to specific stages in the process. Ellis Cooper said that engagement with

residents about the restoration plans was difficult in the absence of detailed proposals. He said, “When we get that detail, we will be able to engage with those residents”.

**85.** Judith Jones highlighted the ongoing engagement with the local community through a liaison committee for the site. The committee meets quarterly and includes membership from council officers, councillors, and local residents. She was confident that the committee members felt adequately engaged. She added that, “The intention would be that, when the amended scheme comes forward, a number of presentations would be made to that liaison committee”.

## Engagement with stakeholders

**86.** Haf Elgar recounted the difficulty in engaging with the local authority regarding the restoration of the Ffos-y-Fran site. Stakeholders had been raising concerns for several years, and noted that “It’s been quite protracted and, throughout the process, difficult to get information out of the local authority”. Daniel Therkelsen agreed with this assessment, characterising the council as being obstructive on times. He noted delays of over a month for responses to some queries.

**87.** Daniel Therkelsen acknowledged that local authority capacity was an issue but suggested there might also be an element of not wanting problems to be widely known. He believed the council might have been reluctant to share information due to the potential for scrutiny and public outcry over the ongoing issues with the site.

## Our view

Ffos-y-Fran, Wales’ last opencast mine, is a symbol of the system's failures, as detailed throughout this report. The failure to restore the site reminds us of the need for robust policies, effective enforcement, and genuine community involvement in site restoration.

It is important to note that there were significant and clear warnings about the potential issues at Ffos-y-Fran. It was one of five sites identified in the 2014 report as being at risk due to insufficient bond cover. While we acknowledge



the challenges the local authority faced in retrospectively applying the recommendations of the 2014 report and the 2016 guidance on best practice, a decade has passed since those warnings were first given. We must question whether the local authority and the Welsh Government have taken all necessary steps to seek a better outcome for the local community.

The licence for Ffos-y-Fran expired in September 2022, yet illegal mining continued, breaching planning controls. Despite calls from the Coal Action Network for a “stop notice,” neither MTCBC nor the Welsh Government acted decisively to halt these activities. This failure underscores the need for stronger enforcement mechanisms.

We commend MTCBC for agreeing to appear before the Committee and for responding positively and constructively in the session. In contrast, the site operator declined the opportunity to explain their position. Instead, they gave the Committee a written statement saying very little. We were disappointed by this. However, the refusal is emblematic of the company's behaviour towards the local authority and residents.

The local authority has experienced considerable difficulties in its relationship with the site operator. The operator's apparent intransigence has meant that it has been difficult to develop a closure plan and difficult to accurately assess the costs of restoration.

It now appears that the site operator has no intention of fulfilling its restoration obligations as per the original plan. Like so many others, it has taken profits from the site but now the money they promised for restoration is not there.

Local authorities such as MTCBC are in an invidious position. The financial burden they face is such that they are left with little choice other than to accept what the site operator is prepared to offer. As we were told in evidence – some restoration is better than no restoration. And legal recourse is expensive, particularly for local authorities where there is pressure on resources. To give MTCBC its due, the authority has shown a willingness to stand up for itself – by taking the Ffos-y-Fran site operator to court and winning. But these kinds of battles are high risk because of the costs, particularly if the case is lost.

Accurate restoration cost estimates are essential for effective planning. The difficulties in obtaining comprehensive data about Ffos-y-Fran have led to a wide range of cost estimates, from £50 million to £120 million. MTCBC has said that accurate assessments were not possible because the site operator did not provide data. Again, we question whether the local authority could and should have done more.

The Coal Authority's criticism of MTCBC's lack of a robust closure plan for Ffos-y-Fran is alarming. Effective closure plans are essential for managing environmental impacts, such as rising water levels, and ensuring site security.

It now appears inevitable that the site restoration will include retaining some of the overburdens and some kind of water body in the void. MTCBC referred to this as a "water feature." This is an unacceptable outcome caused by the site operator's deliberate inaction. The local authority, in conjunction with the site operator, must ensure that any such water body is safe and must produce a plan to ensure that it can, ultimately, provide benefit to the community.

We agree with Merthyr Tydfil Heritage Trust that the objectives of the original plan should be reflected in the revised restoration plan. We accept that the local authority and site operator will wish to consider how these can be achieved in a revised plan, but nevertheless, we believe it is incumbent on them to do so.

As set out earlier in this report, we found residents' comments about the way public authorities had treated them to be heart-rending. Improvements in transparency and engagement are vital. MTCBC now has an opportunity to make amends by ensuring that residents are fully involved in the consideration of the revised restoration plan. The importance of local communities' involvement in restoration decisions cannot be overstated.

In the interests of transparency, MTCBC should commit to publishing the application for the revised plan along with the relevant planning officer's report.

**Recommendation 21.** The Welsh Government must explore stronger enforcement mechanisms to address breaches of planning controls without

delay, such as the mining activities that continued at Ffos-y-Fran after the licence expired.

**Recommendation 22.** In the event that the water cannot be drained from the voids at the site, Merthyr Tydfil County Borough Council must ensure that any water bodies resulting from the restoration at Ffos-y-Fran are safe and provide benefit to the local community.

**Recommendation 23.** Merthyr Tydfil County Borough Council must ensure that the revised restoration plan reflects, as a minimum, the objectives of the original restoration plan, including: safe public access across the East Merthyr historic landscape with a new network of trails and footpaths; sustainable wildlife habitats and biodiverse environmental sites; protection and restoration of surviving heritage features; and the return of most of the site for traditional commoners' use.

**Recommendation 24.** Merthyr Tydfil County Borough Council should fully involve local residents in the consideration of revised restoration plans for the Ffos-y-Fran site.

**Recommendation 25.** Merthyr Tydfil County Borough Council should publish the application for the revised restoration plan at Ffos-y-Fran and the planning officer's associated reports.

**Recommendation 26.** The Welsh Government should consider the broader implications of the failures at Ffos-y-Fran and implement systemic changes to prevent similar issues in future, including in relation to coal-tip reclamation sites.

## Annex 1: List of oral evidence sessions.

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the [Committee's website](#).

Date	Name and Organisation
24 April 2024	<p><b>Carl Banton,</b> The Coal Authority</p> <p><b>Daniel Therkelsen,</b> The Coal Action Network</p> <p><b>Haf Elgar,</b> Friends of the Earth Cymru</p> <p><b>Marcus Bailie,</b> Extinction Rebellion Cymru</p> <p><b>David Kilner,</b> Climate Cymru</p>
9 May 2024	<p><b>Alyson Austin,</b> Merthyr Tydfil resident</p> <p><b>Chris Austin,</b> Merthyr Tydfil resident</p> <p><b>Sue Jordan,</b> Swansea resident</p> <p><b>Owen Jordan,</b> Swansea resident</p> <p><b>Hugh Towns,</b> Carmarthenshire County Council</p>
22 May 2024	<p><b>Geraint Thomas,</b> Merthyr Tydfil County Borough Council</p> <p><b>Ellis Cooper,</b> Merthyr Tydfil County Borough Council</p> <p><b>Judith Jones,</b> Merthyr Tydfil County Borough Council</p>

Date	Name and Organisation
	<p><b>Carwyn Morris,</b> Merthyr Tydfil County Borough Council</p> <p><b>David Cross,</b> Merthyr Tydfil County Borough Council</p> <p><b>Geraint Morgan,</b> Merthyr Tydfil County Borough Council</p>

## Annex 2: List of written evidence

The following people and organisations provided written evidence to the Committee. Additional written information can be viewed on the [Committee's website](#).

<b>People/Organisation</b>
<b>The Coal Authority</b>
<b>The Coal Action Network</b>
<b>Friends of the Earth Cymru</b>
<b>Extinction Rebellion Cymru</b>
<b>Climate Cymru</b>
<b>Merthyr Tydfil County Borough Council</b>
<b>Merthyr (South Wales) Limited</b>
<b>Merthyr Tydfil Heritage Trust</b>
<b>Alyson Austin</b> - Merthyr Tudful resident
<b>Chris Austin</b> - Merthyr Tudful resident
<b>Sue Jordan</b> - Swansea resident
<b>Owen Jordan</b> - Swansea resident
<b>Gaynor Ball</b> - Margam resident
<b>Suzanne De Celis</b> - Margam resident
<b>Janice K Adamson</b> - Margam resident