

**25 March 2014****Agenda Item:5****REPORT OF CORPORATE DIRECTOR POLICY, PLANNING AND  
CORPORATE SERVICES****BASSETLAW DISTRICT REF. NO.: 1/13/01390/CDM**

**PROPOSAL: VARIATION OF CONDITION 28 (REQUIREMENT TO HAVE EXISTING RAIL LINE IN PLACE AND IN GOOD WORKING ORDER), OF PLANNING PERMISSION 1/60/12/00001 AND 2/2012/0072/NT TO ALLOW AN EXTENDED TIME TO COMPLY BY 12 MONTHS**

**LOCATION: WELBECK COLLIERY, ELKESLEY ROAD, MEDEN VALE, MANSFIELD**

**APPLICANT: HARWORTH ESTATES INVESTMENTS LTD AND TETRON POINT LP**

**Purpose of Report**

1. To consider a planning application to vary a planning condition to extend the period for compliance in which a rail line is reinstated, at Welbeck Colliery, Meden Vale. The key issues relate to sustainability, economic viability, crime and disorder, traffic and transportation. The recommendation is to grant planning permission.

**The Site and Surroundings**

2. The Welbeck Colliery site spans the Mansfield and Bassetlaw District boundaries, sitting approximately 9.5km north of the centre of Mansfield (see Plan 1). The colliery complex covers a total area of circa 127 hectares. The colliery was an active coal mine until May 2010, when mining operations ceased.
3. Immediately to the south of the colliery is the village of Meden Vale. Approximately 330m to the south-west is Church Warsop, beyond which is Market Warsop; and 900m to the north is the village of Cuckney.
4. The site is bordered to the north and west by a belt of trees which form plantations. These include the Warsop Hill Plantation, Presley's Plantation and the Hatfield Plantation. Along the eastern half of its southern boundary the site is bordered by Meden Vale, and to the western half of the colliery site's southern boundary agricultural fields border the site. To the east there are further agricultural fields.

5. The colliery site itself comprises three main sections: the un-restored northern half of the spoil tip, the restored southern half of the spoil tip and the former pit head area to the east.
6. The southern section of the spoil tip, which is restored, forms a large engineered hill with its toe at the northern edge of Meden Vale village. The tip slopes northwards rising from 65m Above Ordnance Datum (AOD) to about 123m AOD over approximately 470m. The restored tip section stretches for approximately 1.25km from east to west and is bordered by the Cuckney Hill Road (A60) to the west and the Meden Vale sports ground and football pitches to its east. The majority of the restored area comprises semi-improved grassland. There is a 50m wide belt of trees running along the eastern half of the southern boundary, providing screening for residential properties in Meden Vale. In addition, there are some small areas of tree planting to the north-west of the restored tip area that are yet to mature.
7. To the east of the spoil tip is the site of the former colliery works and pit head complex. Since closure the buildings have been progressively demolished and the area now comprises a large area of levelled hardstanding. The rail track and rail head remain.
8. The planning application boundary runs along the northern boundary of the colliery site, adjacent to the woodland plantations and curves back on itself to roughly follow the line of the already restored southern half of the spoil tip. The spoil tip area under restoration measures approximately 1.15km in length from the A60 in the west to the former pit head area in the east. In terms of width, the tip measures between 320m to 400m from the northern boundary to the top of the tip where un-restored and restored areas meet.
9. The un-restored spoil tip area is of a variable landform, due to the early closure of the colliery and there being insufficient spoil to complete the approved restoration profiles. The landform includes gently sloping lower level sections, with some hollows in which water has gathered, to steep and almost vertical escarpments. The majority of this area is bare mining spoil, although there are some parts where a covering of rough grass has developed.
10. The planning application boundary includes two spurs off the eastern side of the colliery spoil tip area. One of the spurs follows the length of the existing colliery access road that heads in a north-east direction and forms the northern boundary of the wider colliery site. The access road runs for approximately 1.1km and connects to the A616. The second spur follows the rail track from the spoil tip in an easterly direction for approximately 650m where the red-line boundary then opens into a wider area for storage purposes for the wastes and materials delivered via rail. In total the planning application area measures approximately 44 hectares.
11. There are two vehicular access roads into the wider colliery site. One of the accesses, as mentioned above, connects to the A616 to the north-east. The other colliery site access is off Elkesley Road at the southern boundary of the former pit head area. Elkesley Road passes through the residential area of Meden Vale where it connects to Netherfield Lane in the south. It is noted that only the A616 access is included within the planning application boundary.

12. In addition to the access roads, there is a rail line which heads into the eastern side of the site. The rail line curves around the eastern side of Meden Vale before heading in a southerly direction (see Plans 1 and 2).
13. Due to the size of the site, the distances to residential sensitive receptors vary. To the west of the planning application site the nearest sensitive receptor is Metz Lodge which is located off the A60 approximately 100m west of the application boundary. In terms of residential receptors located within Meden Vale, the closest are between 350-400m from the southern application boundary of the unrestored tip area, although there are Meden Vale properties located approximately 130m to the south of the eastern part of the application site. In relation to the access road there is a single property, Sedan Lodge, which is circa 150m to the west off the A616.
14. The Cuckney Conservation Area is approximately 350m north of the application boundary at its closest point and circa 830m south of the application site is the Church Warsop Conservation Area. Within the Cuckney Conservation Area the most notable heritage assets are the Cuckney Motte and Bailey Castle (Scheduled Ancient Monument) and the Church of St Mary (Grade I Listed). Within the Church Warsop Conservation Area there is the Church of St Peter and St Paul (Grade I Listed) and the Bishops Lodgings (Grade II\* Listed). Within and around both of the conservation areas there are a number of other Grade II Listed Buildings.
15. The nearest ecological site is the Elkesley Hill Site of Importance for Nature Conservation (SINC). This is a small hill with a noteworthy mosaic of scrub and acidic grassland communities located immediately adjacent to the southern boundary of the eastern most section of the planning application area. Also of note is The Bottoms, also a SINC, which is a length of good riparian habitats along the River Meden. The Bottoms is, at its closest point, 500m south of the application site.
16. The nearest statutorily designated ecological sites are the Birklands and Bilhaugh Site of Special Scientific Interest (SSSI); the Birklands and Bilhaugh Special Area of Conservation (SAC), which is within the SSSI area; and the Welbeck Lake SSSI. The Birklands and Bilhaugh sites are located to the south-east of the application area, with the nearest part 1.8km distant and the Welbeck Lake SSSI is approximately 2km away to the north-east.
17. Whilst it is not a designated site, it is still important to note that approximately 1.5km south-east of the application area is the Natural England Indicative Core Area (ICA) and RSPB Important Bird Area (IBA) for breeding Nightjar and Woodlark. These are areas which may form the basis of a Special Protection Area (SPA) in the future for Nightjar and Woodlark. In addition, the site is within the 5km buffer zone of the IBA.
18. The site is not located within an area at risk of flooding. The nearest flood risk area is either side of the River Meden to the south of the site, with the nearest point approximately 500m distant.

19. The geology beneath the site (Sherwood Sandstone Group) is classified as a Principal Aquifer. The site lies within the Environment Agency's total catchment Groundwater Source Protection Zone.
20. The nearest rights of way include a bridleway located approximately 200m to the north-west of the application site, which runs from the A60 to Cuckney. In addition, there is an existing footpath that runs partially along the western side of the application site and then also along the length of the southern boundary of the restored spoil tip and along the northern edge of Meden Vale.

### **Proposed Development**

21. Planning permission was granted by Planning and Licensing Committee on 19<sup>th</sup> December 2012 for the restoration of the northern part of Welbeck Colliery spoil heap, involving the importation of approximately 1.9 million cubic metres of suitable engineering fill, recovered aggregates and other suitable materials, including wastes such as pulverised fuel ash, third party soils and stone.
22. Condition 28 of the permission states:  
  
*"Within 6 months of the importation of any material the rail line shall be in place and in good working order and be so maintained for the duration of the development hereby permitted"*
23. The applicant highlights that the permission was formally implemented on 21 May 2013, and as a result the rail line should have been in place by 21 November 2013. The applicant is seeking to vary the condition, so as to allow an additional 12 months to comply with the requirement of Condition 28. The suggested alternative wording is set out below:  
  
*"The rail line shall be in place and in good working order by 21 November 2014 and shall be so maintained for the duration of the development hereby permitted"*

### **Consultations**

24. **Bassetlaw District Council** – *No objection.*
25. **Cuckney Parish Council** – *Objection. The existing operations are resulting in the routeing of HGVs through Cuckney, which is contrary to the vehicular routeing secured through Condition 29 of the existing planning permission.*
26. **NCC (Planning Policy)** – *No objection. National and local policy seeks to promote sustainable development, including the use of alternatives to road transport. However, sustainability incorporates economic, environmental and social considerations, which have to be balanced in the achievement of sustainable development. In this instance it is recognised that if suitable material/sources are not yet available, the non-reinstatement of the rail line at this point in time could be supported to ensure continued restoration of the colliery site, which brings environmental and social benefits.*

27. *In terms of the impact of the time extension on road transport, NCC Policy defer to the Highways Team for their comments on the capacity of the local highway network and impact on local communities.*
28. **Network Rail** – *At present the applicant does not have any contract in place for the transport of materials by rail and refurbishment of the branch line would present an opportunity for further theft should it not be in regular use. In the circumstances, Network Rail has no objection to the extension of time to comply with the planning condition.*
29. **Severn Trent Water Limited** – *No objection. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewerage have been submitted to and approved by the Local Planning Authority.*
30. No response received from **Mansfield District Council, Norton Parish Council, Warsop Parish Council, National Grid (Gas) and Western Power Distribution**. Any responses received will be reported orally.

## **Publicity**

31. The application has been advertised by press notice and site notices in accordance with the County Council's Adopted Statement of Community Involvement. No public representations have been received.
32. Councillors John Allin and John Ogle have been notified of the application.

## **Observations**

33. Condition 28 of the existing spoil tip restoration permission (Ref: /2012/0072/NT & 1/60/12/00001) requires the existing rail line into the site to be in good working order within 6 months of the importation of any material to the site, and maintained as such for the duration of the development. The applicant is seeking to vary this condition to delay the requirement for the rail line to be in good working order until 21<sup>st</sup> November 2014.
34. When the original restoration application was submitted, the Environmental Statement (ES) stated that "The material import will primarily be undertaken using the existing railway. The material will be imported 24 hours a day". It also highlighted that the use of the existing rail head was the preferred method of transportation of material to the site and in addition to the sustainable transport of material to the site, it would facilitate a much speedier and efficient completion of the construction of the restoration scheme.
35. In light of the significance of the rail line to the importation of material and the restoration of the site as a whole, a condition was attached to the planning permission requiring the existing rail line into the site to be in good working order. The reason for the condition as set out in the decision notice is:

*"To minimise traffic impact on the surrounding residential areas and in accordance with Policy W3.16 of the WLP and Policy M3.12 of the MLP; and to*

*provide a sustainable transport solution in accordance with the National Planning Policy Framework.”*

36. Policy M3.12 of the Nottinghamshire Minerals Local Plan (MLP) relates to highways safety and protection. Policy W3.16 of the Nottinghamshire and Nottingham Waste Local Plan (WLP) related to the transport of waste by rail, but has since been replaced by the Waste Core Strategy. The National Planning Policy Framework (NPPF) encourages local authorities to facilitate the use of sustainable modes of transport.
37. The applicant formally implemented the planning permission on 21<sup>st</sup> May 2013, and acknowledges that the rail line should have been in good working order by 21 November 2013. However, at the current time the rail line is not yet capable of being used. The applicants have set out in the planning application a number of reasons as to why they are seeking to delay the repair of the rail line. The reasons are summarised below:
  - a) At the planning application stage the applicants were not aware of where the sources of material would be and could not, therefore, foresee when the rail link might be needed. The only identified source at the time was from Fiddlers Ferry Power Station, but to date there is no contract to source material from this power station.
  - b) Current suppliers of material that do have a rail facility (EDF at West Burton and Eon at Ratcliffe on Soar) do not have the capacity to use their rail facility for any additional use due to existing operations at the site that rely on rail (i.e. unloading coal). Until there is spare capacity, rail supply of material from these sources cannot be relied upon.
  - c) The applicants are actively seeking suppliers of materials that can rely on use of the rail line facility. In preparation for this, the applicants' contractors have made contact with Network Rail to discuss the principle of works necessary to bring the rail facility back into use and have devised a scope of works for costing purposes.
  - d) The comments from NCC Highways in response to the original planning application accepted that the traffic generated by the proposal would not have a significant additional effect on the road network, and these comments were not reliant on the rail link. In addition, the current use of HGV movements of material has caused no known incidents or complaints and the agreed transport route has proved highly successful at minimising impacts on nearby villages.
  - e) The colliery has a long history of theft and vandalism, particularly in relation to the rail link and track materials. If the track is restored without regular use, the risk to security at the site is greatly increased as the past theft of clips, fishplates and couplings demonstrates. A disused refurbished rail head would encourage theft and unauthorised access by third parties to a dangerous site. The current absence of short-term suppliers of material reliant on transport by rail, combined with associated security risk, justifies a short delay in completion of the requisite refurbishment works.

- f) Enforced upgrading works to the rail head would delay the current restoration works and may extend the life of the development beyond the approved period.
  - g) It is the applicants firm intention to provide the rail head by 21 November 2014 or at any time beforehand once a suitable supplier has been secured.
38. The reasons outlined above for this application are considered in turn. Firstly, it is acknowledged now, and was at the time of determination, that when the original planning application was submitted there were no contracts in place to source material using the rail link. However, the applicant did at the time strongly promote the development on the basis that the majority of the material transported to the site would be by rail. To renege on such a statement which was relied upon in the determination of the application, justifying it by claiming that no contracts were secured, is disappointing, particularly when it would be unreasonable to expect the applicants to have contracts secured prior to permission being granted.
39. The applicant highlights that sourcing material from the nearby power stations (West Burton and Cottam) is difficult due to rail capacity, meaning there is no room on their rail lines to export PFA as well as current importation of coal. This is considered a valid reason for why material from these sources is transported by road, although, it is hoped that should capacity present itself in the future the applicant seizes such an opportunity.
40. The active seeking of suppliers, who can provide material by rail, and the scoping of works and costs to restore the rail line, is welcomed.
41. The applicants draw attention to the fact that the consultation response from the NCC Highways Team did not rely on the implementation of the rail line. This is wholly accepted and it is also important to note that there are other conditions, which the applicants are not seeking any change to, which limit the number of HGVs to and from the site, and control the routeing of HGVs (Conditions 29 and 30 respectively).
42. The applicant also states that the current use of HGV movements of material has caused no known incidents or complaints and the agreed transport route has proved highly successful at minimising impacts on nearby villages. This may have been the case when the application was first implemented, however, during December there were a number of complaints that numerous HGVs associated with the Welbeck Colliery spoil tip restoration were passing through the village of Cuckney, contrary to the approved routeing secured by Condition 29. This has also led to an objection from Cuckney Parish Council. Investigations by NCC's Monitoring and Enforcement Officers has confirmed that HGVs have been departing from the approved routeing arrangement and passing through Cuckney. However, it is also of note that no further complaints regarding this have been received this year.
43. The objection by the Parish Council to this application due to the movement of HGVs through Cuckney is understandable, but is somewhat of a distraction from the main issues at consideration. This is because there are existing controls on vehicle numbers and routeing, which the applicants are not seeking to change.

As such, the use of Cuckney as a through route is an issue of enforcement and should not be a consideration in this application.

44. The applicants draw attention to a history of vandalism and theft at Welbeck Colliery. There is concern that a refurbished, but unused, rail line would present an opportunity for further theft, without resulting in any benefits. There is merit in this argument, given that the condition requires the refurbishment of the rail line, but could not possibly enforce its use.
45. The applicants state that enforced upgrading works to the rail head would delay the current restoration works and may extend the life of the development beyond the approved period. Whilst this may be true, there is no evidence to explain why such upgrading works would delay the restoration process. In addition, the fact that the applicants still intend to implement the rail line by November 2014 suggests that upgrading works would be factored into the restoration programme at some point, whether it takes place now or at some later point appears to be inconsequential to the overall timescale of the project.
46. Policy M3.15 of the MLP relates to the bulk transport of minerals by rail, stating that such applications will be permitted where this would result in an overall environmental benefit. The Nottinghamshire and Nottingham Waste Local Plan: Part 1 Waste Core Strategy (WCS) was adopted in December 2013. Policy WCS11 of the WCS states that all waste management proposals should seek to maximise the use of alternatives to road transport such as rail. In addition, the NPPF promotes sustainable transport and encourages solutions which support reductions in greenhouse gas emissions and reduce congestion. The proposal to delay the refurbishment of the rail line would appear to be contrary to these policies. However, requiring its implementation when it would go unused would result in the development complying with its current permission, but would not result in any environmental or sustainability benefit, which is the thrust of these policies. In addition, allowing additional time to comply with the rail refurbishment condition would not preclude its refurbishment should the applicant secure a contract to import material by rail at an earlier date.
47. In addition to the above, the implementation of an unused rail line at this stage could encourage crime and disorder, specifically metal theft. Such an approach would not be in line with the NPPF, which seeks to minimise crime and disorder.
48. In conclusion, it is disappointing that the applicants have not been able to secure contracts to import material by rail and that this has resulted in material being transported to the site in a significantly different manner to that presented in the original application. In this regard, the original application appears to have been misleading, although there is no accusation of this being deliberate. Nevertheless, to not grant this permission, and require the rail line to be refurbished immediately, would not result in any sustainability benefits to the scheme and may exacerbate existing issues of metal theft. It is for these reasons that it is recommended that planning permission is granted for the extension of time sought.
49. Aside from Condition 28 which the applicant is seeking to vary, a number of minor alterations have also been made to reflect the fact that the planning



permission has been implemented and information submitted to discharge conditions, the changes are set out in Table 1 below:

**Table 1 – Proposed Changes to Conditions**

<b>Condition No.</b>	<b>Condition Description</b>	<b>Amendment</b>
1	Defines the extent of the planning permission.	<b>No change.</b>
2	Requires development to commence within one year.	<b>Varied</b> - References the commencement date of 21 <sup>st</sup> May 2013
3	Requires notification of the date of commencement.	<b>Deleted.</b>
4	Requires placement of waste to cease within 5 years of commencement.	<b>Varied</b> - Identifies the 21 May 2018 as the end date for importation of restoration materials.
5	Requires restoration to take place within 12 months of the cessation of waste and other materials being placed.	<b>Varied</b> – Identifies the 21 May 2019 as the date for the completion of restoration.
6	Requires the submission of a phasing plan prior to the commencement of development.	<b>Varied</b> – to reference submitted phasing plans.
7	Requires the annual submission of a topographical survey.	<b>Varied</b> – to acknowledge that commencement has taken place.
8	Details the approved plans and documents.	<b>No change.</b>
9	Requires a copy of the planning permission to be present at site.	<b>No change.</b>
10	Sets out the hours of working.	<b>No change.</b>
11	Sets out dust prevention measures.	<b>No change.</b>
12	Requires the submission of a dust monitoring scheme.	<b>Varied</b> – to reference submitted dust monitoring scheme.
13	Requires the submission of details of a sustainable drainage system for the site.	<b>No change.</b>
14	Requires all plant to be fitted with effective silencers and maintained in accordance with manufacturers' specifications.	<b>No change.</b>
15	Requires mobile plant to be fitted with smart audible alarms adjusted to background levels.	<b>No change.</b>
16	Requires any conveyors to be fully enclosed.	<b>No change.</b>
17	Requires the earth bunds around the soil management area to be in place prior to the importation of any material.	<b>No change.</b>
18	Sets out measures to be taken in the event of a noise complaint.	<b>No change.</b>
19	Requires a noise assessment to be undertaken should any operations take place within 100m of Metz Lodge.	<b>No change.</b>
20	Requires the submission of a Construction Environmental Management Plan (CEMP).	<b>Varied</b> – to reference submitted CEMP.
21	Requires acid grassland to remain undisturbed until a survey and method statement for translocation have been undertaken.	<b>Varied</b> – to reference submitted survey and method statement.
22	Requires the submission of details of location and type of habitat protection	<b>Varied</b> – to reference submitted habitat protection fencing.

	fencing to be in place.	
23	Requires clearance works to take place in line with the reptile method statement.	<b>No change.</b>
24	Requires clearance works to take place in accordance with nesting bird method statement.	<b>No change.</b>
25	Requires the submission of an Ecological Management Plan.	<b>No change.</b>
26	Requires the submission of a mitigation scheme should protected species be found on site.	<b>No change.</b>
27	Requires the submission of a detailed restoration scheme.	<b>Varied</b> – to reference submitted landscaping scheme.
28	Requires the rail line to be in place and in good working order within 6 months of the commencement of development.	<b>Varied</b> – Condition is subject of this application.
29	Secures HGV routing.	<b>No change.</b>
30	Limits the number of HGVs to and from the site.	<b>No change.</b>
31	Requires details of wheel wash facilities.	<b>No change.</b>
32	Requires the submission of a Phase 2 Environmental Risk Assessment (ERA).	<b>Varied</b> – to reference submitted ERA.
33	Requires the submission of a Materials Management Plan (MMP).	<b>Varied</b> – to reference submitted MMP.
34	Requires the provision of engineering calculations to demonstrate restoration profiles are acceptable.	<b>Deleted</b> – Slope calculations are included in the MMP which is to be secured under the preceding Condition.
35	Sets out storage criteria for oil, fuel and chemicals.	<b>No change.</b>
36	Prevents the restriction or obstruction of any public Rights of Way.	<b>No change.</b>
37	Requires submission of details of paths, cycle and bridleways prior to implementation.	<b>No change.</b>
38	Requires circular cycleway and bridleway to be implemented within 12 months of the cessation of waste and material being imported.	<b>No change.</b>
39	Requires the submission of details of pedestrian access points.	<b>No change.</b>
40	Requires notification to the WPA of soil movements.	<b>No change.</b>
41	Ensures that soils and overburden is only placed when in a dry and friable condition.	<b>No change.</b>
42	Prevents plant and vehicles crossing placed and loosened ground and replaced soils.	<b>No change.</b>
43	Requires placed soils to be ripped using overlapping parallel passes.	<b>No change.</b>
44	Only low ground pressure machinery to work on re-laid soils.	<b>No change.</b>
45	Secures aftercare for a 5 year period.	<b>No change.</b>
46	Date of aftercare commencing to be agreed with WPA.	<b>No change.</b>
47	Requires the submission of an aftercare scheme.	<b>No change.</b>
48	Requires annual aftercare meetings.	<b>No change.</b>

49	Puts in place measures for alternative restoration should the importation of restoration material cease.	<b>No change.</b>
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50. It is noted that Severn Trent recommend a condition that no development commences until drainage plans for the disposal of surface water and foul sewerage have been submitted. Such a condition is not considered relevant to the permission being sought in this case.

### **Other Options Considered**

51. The alternative would be to enforce the refurbishment of the rail line without any extension of time, although the report identifies sufficient justification for supporting the proposed course of action.

### **Statutory and Policy Implications**

52. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Implications for Service Users, Financial Implications, Equalities, Safeguarding of Children and Human Resources**

53. No implications.

### **Crime and Disorder Implications**

54. The site has previously suffered from trespassing, vandalism, and metal theft particularly in relation to elements of the rail head. The refurbishment of the rail head without it being in use would present an unnecessary opportunity for further theft from the site.

### **Human Rights Implications**

55. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

### **Implications for Sustainability and the Environment**

56. This application seeks permission to delay the refurbishment of the existing rail line into the Welbeck Colliery site. If refurbishment were to take place

immediately there would be no mechanism to ensure material is imported by rail. Conversely, in granting this application planning permission, it would not preclude the refurbishment and use of the rail line for material importation at an earlier date. As such, the implications for sustainability and the environment are considered negligible.

### **Statement of Positive and Proactive Engagement**

57. In determining this application the Waste and Minerals Planning Authority has worked positively and proactively with the applicant by assessing the proposals against relevant Development Plan policies, all material considerations, consultation responses and any valid representations that may have been received. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

### **RECOMMENDATIONS**

58. It is RECOMMENDED that planning permission be granted subject to the conditions set out in Appendix 1. Members need to consider the issues, including the Human Rights Act issues, set out in the report and resolve accordingly.

**JAYNE FRANCIS-WARD**

**Corporate Director Policy, Planning and Corporate Services**

### **Constitutional Comments**

Planning and Licensing Committee has authority to approve the recommendation set out in this report by virtue of its terms of reference.

[NAB 11.03.14]

### **Comments of the Service Director - Finance**

There are no specific financial implications arising directly from this report.

[SEM 12.03.14]

### **Background Papers Available for Inspection**

The application file available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

**Electoral Division(s) and Member(s) Affected**

Warsop – Councillor John Allin

Tuxford – Councillor John Ogle

Report Author / Case Officer

Oliver Meek

0115 9696516

For any enquiries about this report, please contact the report author.

W001249



## RECOMMENDED PLANNING CONDITIONS

### Extent of Planning Permission

1. This permission relates to land within the red line on Drawing No. 103186/P/001 Rev A titled 'Site Location Plan' dated February 2012 – received by the Waste Planning Authority (WPA) on 8 February 2012.

*Reason: To define the extent of the planning permission*

### Commencement and Duration of the Development

2. The development hereby permitted commenced on 21<sup>st</sup> May 2013.

*Reason: To ensure restoration of the site begins within an acceptable timescale and to comply with the requirements of Section 91 (as amended) of the Town and Country Planning Act 1990.*

3. The placement of waste and other fill material hereby permitted shall cease no more later than 21 May 2018. Should placement cease prior to this date the WPA shall be notified within 14 days of cessation.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy W4.2 of the Nottinghamshire and Nottingham Waste Local Plan (WLP) and Policy M4.5 of the Nottinghamshire Minerals Local Plan (MLP).*

4. The final restoration, as shown on Drawing 103186/P/004 Rev B titled 'Proposed Block Plan – Restoration' received by the WPA on 27 January 2012 and the amended landscaping plan to be submitted under Condition 28, shall be completed by 21 May 2019, or within 12 months of the cessation of waste and other fill material being placed, whichever is earlier.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy W4.2 of the WLP and Policy M4.5 of the MLP.*

### Phasing

5. The deposit of waste and material shall take place in accordance with the phasing details shown in Drawings No. 103186/Phasing/1-5 received by the WPA on 17 October 2012. The noise bund constructed in the Soil Management Area shall be removed during the final phase (Phase 5) of the development.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy W4.2 of the WLP and Policy M4.5 of the MLP.*

6. A topographical survey of the site shall be submitted to the WPA by 31 December each year, until the cessation of waste and material placement. The topographical survey shall identify all complete and incomplete areas.

*Reason: To secure the proper restoration of the site within an acceptable timescale and in accordance with Policy W4.2 of the WLP and Policy M4.5 of the MLP.*

### **Approved Details and Plans**

7. The development hereby permitted shall only be carried out in accordance with the following documents, unless amendments are made pursuant to other Conditions:
- a) Drawing No. 103186/P/001 Rev A titled 'Site Location Plan' dated February 2012 – received by the WPA on 8 February 2012.
  - b) Drawing No. 103186/P/002 titled 'Proposed Block Plan – Access and Construction Logistics' – received by the WPA on 27 January 2012.
  - c) Drawing No. 103186/P/004 Rev B titled 'Proposed Block Plan – Restoration' – received by the WPA on 27 January 2012.
  - d) Drawing No. 103186/P/005a titled 'Cross Section Location Plan' – received by the WPA on 27 January 2012.
  - e) Drawing No. 103186/P/005b titled 'Cross Sections Section A and B' – received by the WPA on 27 January 2012.
  - f) Drawing No. 103186/P/005c titled 'Cross Sections Section C' – received by the WPA on 27 January 2012.
  - g) Drawing No. 103186/P/006 titled 'Preliminary Landscape Proposals Plan' – received by the WPA on 27 January 2012.
  - h) Drawing No. 103186/P/007 titled 'Picnic and Viewing Area – Sketch Layout' – received by the WPA on 27 January 2012.
  - i) Planning Application Forms – received by the WPA on 27 January 2012.
  - j) Statement in Support of Planning Application Incorporating Design and Access Statement and Planning Policy Appraisal – received by the WPA on 27 January 2012.
  - k) Appendices to Statement in Support of Planning Application Incorporating Design and Access Statement and Planning Policy Appraisal – received by the WPA on 27 January 2012.
  - l) Transport Assessment (i-Transport Ref: MG/BT/ITB6187-001E R) – received by the WPA on 27 January 2012.
  - m) Site Waste Management Plan – received by the WPA on 27 January 2012.



- n) Welbeck Colliery Environmental Statement Volume 1 – Main Text and Embedded Figures – received by the WPA on 27 January 2012.
- o) Welbeck Colliery Environmental Statement Volume 2 – Figures and Appendices – received by the WPA on 27 January 2012.
- p) Welbeck Colliery Environmental Statement Non-Technical Summary – received by the WPA on 27 January 2012.
- q) Statement in Response to Regulation 22 Request for Further Information – received by the WPA on 15 June 2012.

*Reason: For the avoidance of doubt.*

8. From the commencement of the development to its completion, a copy of this permission, including all plans and documents hereby approved and any other plans and documents subsequently approved in accordance with this permission and its conditions shall always be available at the site offices for inspection by the WPA during normal working hours.

*Reason: To enable the WPA to monitor compliance with the conditions of the planning permission.*

## Hours of Working

9. Except in the case of emergency when life, limb or property are in danger (such instances which are to be notified in writing to the WPA within 48 hours of their occurrence, or with the prior agreement of the WPA) the development hereby permitted shall only take place within the following hours:

Activity	Day	Hours
HGV arrival and departure	Monday to Friday	08:00 – 18:00
	Saturday	08:00 – 13:00
	Sundays, Public or Bank Holidays	These activities shall not occur
Waste and fill material transfer around the site and placement	Monday to Saturday	07:00 – 19:00
	Sundays, Public or Bank Holidays	These activities shall not occur
Train arrival, unloading and departure	7 Days a Week	24 Hours a Day

*Reason: In the Interest of amenity and in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*

## Dust

10. Notwithstanding the production of a Construction Environmental Management Plan (CEMP), measures shall be taken to minimise the generation of dust from operations at the site. These shall include, but not necessarily be limited to, any or all of the following steps as appropriate:
  - a) The use of water bowsters to dampen haul roads, inert waste and construction fill material stockpiles, and other operational areas of the site;

- b) Internal roadways, storage areas and hard surfaces shall be regularly swept to keep them free of mud and debris likely to give rise to dust;
- c) The regular re-grading of internal haul roads;
- d) Bulk loads arriving at or leaving the site shall be carried in enclosed or sheeted containers;
- e) The fitting of all mobile plant with exhaust systems which cannot be emitted in a downward direction;
- f) Soil storage mounds which are not to be used within 3 months shall be graded and seeded;
- g) The minimisation of exposed surfaces on the soil mound, both the working area and the area being restored;
- h) Upon the request of the WPA, the temporary suspension of waste and construction fill material movement or placement in periods of unfavourably dry or windy weather conditions.

*Reason: In the interests of the amenity of nearby occupiers and to accord with Policy W3.10 of the WLP and Policy M3.7 of the MLP.*

11. Dust monitoring shall be carried out on-site in accordance with the 'dust and air quality' section of the Environmental Management Plan and subsequent e-mail dated 18<sup>th</sup> June 2013.

*Reason: In the interests of the amenity of nearby occupiers and to accord with Policy W3.10 of the WLP and Policy M3.7 of the MLP.*

## **Drainage**

12. Within 6 months of the commencement of development details of a sustainable drainage system for the site shall be submitted to, and approved by, the WPA. The sustainable drainage system details shall include proposed discharge rate, consequent storage volumes and sediment management. The development shall be carried out in accordance with the approved details.

*Reason: To ensure the development does not have an unacceptable impact upon surface water in accordance with Policy W3.5 of the WLP; M3.8 of the MLP; and Policy DM12 of the Bassetlaw Core Strategy (BCS).*

## **Noise**

13. All mobile plant on site shall be fitted with effective silencers in accordance with the manufacturers' recommendations and maintained in accordance with the manufacturers' specifications.

*Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*

14. All mobile plant on-site shall be fitted with smart audible alarms adjusted to background noise levels at all times.
- Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP*
15. All conveyor systems used to transfer waste and construction material around the site shall be fully enclosed.
- Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*
16. Prior to any waste or construction fill material being imported to the site, the 2.5m high earth bunds around the Soil Management Area (SMA) shall have been constructed in accordance with details shown on Drawing 103186/P/002 titled 'Proposed Block Plan – Access and Construction Logistics' – received by the WPA on 27 January 2012.
- Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*
17. In the event that the WPA consider that operational noise emissions from activity at the site is likely to generate complaints the operator shall undertake a noise survey within 2 weeks of a written request from the WPA. The noise survey shall be undertaken in accordance with BS4142:1997 and shall be carried out under the supervision of the WPA. The results of the noise survey shall be provided to the WPA for its written approval within 1 month of the survey being undertaken. Should the results of the noise survey suggest that further mitigation measures are necessary these shall be identified within the report and implemented within 1 month following their approval by the WPA, unless otherwise agreed in writing by the WPA.
- Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*
18. Prior to any operations being undertaken within 100m of the sensitive noise receptor Metz Lodge, a noise assessment undertaken in accordance with BS 4142: 1997 shall be submitted to, and approved by the WPA. Should the results of the noise survey suggest that further mitigation measures are necessary these shall be identified within the report and implemented before works begin in accordance with the approved details.
- Reason: To mitigate noise impact in accordance with Policy W3.9 of the WLP and Policy M3.5 of the MLP.*

## **Ecology**

19. Development shall be undertaken in accordance with the Construction Environmental Management Plan (CEMP) received by the WPA on 14 November 2012.

*Reason: To protect wildlife and established habitat in accordance with Policy W3.22 of the WLP and Policy M3.17 of the MLP.*

20. The translocation of acid grassland shall take place in accordance with the following documents:

- a) Method Statement Revision A – received by the WPA on 11 April 2013;
- b) Landscape Specifications for Establishment Methods and Maintenance Regimes (years 0-5) – received by the WPA on 11 April 2013; and
- c) Drawing No. 2012-PL003 Rev A titled 'Detailed Restoration Scheme' – received by the WPA on 11 April 2013.

*Reason: To safeguard established Biodiversity Action Plan (BAP) habitat in accordance with Policy W3.22 of the WLP and Policy M3.17 of the MLP.*

21. The fencing to protect the habitat along the railway sidings shall be undertaken, and maintained for the duration of the development, in line with the temporary fencing plan received by the WPA on 17 October 2012.

*Reason: To protect established habitat in accordance with Policy W3.22 of the WLP and Policy M3.17 of the MLP.*

22. Clearance works shall be undertaken in accordance with the Method Statement relating to reptiles provided in Appendix B of Appendix 2 of the 'Statement in Response to Regulation 22 Request for Further Information'.

*Reason: To safeguard protected species and to accord with Policy W3.22 of the WLP, Policy M3.17 of the MLP and Policy NE12 of the Mansfield District Local Plan (MDLP).*

23. Clearance works shall be undertaken in accordance with the Method Statement relating to nesting birds provided in Appendix C of Appendix 2 of the 'Statement in Response to Regulation 22 Request for Further Information'. A minimum buffer zone of 10m radius around bird nests (20m radius in the case of little ringed plover) shall be clearly marked out on the ground using suitable fencing to safeguard the area and minimise disturbance.

*Reason: To avoid disturbance to breeding birds.*

24. Within 6 months of the commencement of development an Ecological Management Plan (EMP) shall be submitted to, and approved in writing by, the WPA. The EMP shall be implemented as approved.

*Reason: To ensure the ongoing management and aftercare of the restored site in accordance with Policy W4.9 of the WLP and Policy M4.9 of the MLP.*

25. Should any protected species be found on-site during the course of the development hereby permitted, operations shall immediately cease until a

suitable mitigation scheme has been implemented in full accordance with details previously submitted to and approved in writing by the MPA.

*Reason: To safeguard protected species and to accord with Policy W3.22 of the WLP, Policy M3.17 of the MLP and Policy NE12 of the Mansfield District Local Plan (MDLP).*

## **Landscaping**

26. The restoration of the site shall take place in accordance with the 'Landscape Specification for Establishment Methods and Maintenance Regimes (years 0-5)' and Drawing No. 2012-PL003 Rev A titled 'Detailed Restoration Scheme' received by the WPA on 11 April 2013.

*Reason: To safeguard and establish wildlife and habitat including Biodiversity Action Plan (BAP) habitat in accordance with Policy W3.22 of the WLP and Policy M3.17 of the MLP.*

## **Traffic and Transport**

27. The rail line shall be in place and in good working order by 21 November 2014 and shall be so maintained for the duration of the development hereby permitted.

*Reason: To minimise traffic impact on the surrounding residential areas and in accordance with Policy W3.15 of the MLP, Policy WCS11 of the Nottinghamshire and Nottingham Waste Local Plan: Part 1 Waste Core Strategy (WCS) and to provide a sustainable transport solution in accordance with the National Planning Policy Framework.*

28. All Heavy Goods Vehicle (HGV) movements and construction workforce traffic shall only use the routes shown on Figure 9.1 of the Environmental Statement - Volume 2 titled 'Vehicle Routing Strategy' received by the WPA on 27 January 2012. Vehicles shall only use the existing access / egress off the A616 when travelling to and from the site from all directions.

*Reason: To minimise traffic impact on the surrounding residential areas and in accordance with Policy W3.15 of the WLP and Policies M3.13 and M3.14 of the MLP.*

29. The number of HGV movements associated with the site shall not exceed 300 per weekday (150 in, 150 out) and 150 (75 in, 75 out) on a Saturday. There shall be no HGV deliveries to the site on Sundays, Public or Bank Holidays. A record shall be kept by the operator of the number of HGV movements into and out of the site on a daily basis. These records shall be made available to the WPA within seven days of a written request from the WPA. All such records shall be kept for at least 12 months.

*Reason: To minimise traffic impact on the surrounding residential areas and in accordance with Policy W3.14 of the WLP and Policies M3.13 and M3.14 of the MLP.*

30. Details of a wheel wash facility shall be submitted to and approved in writing by the WPA. The wheel wash facility shall be installed and operational in accordance with the submitted details prior to any waste or construction fill materials being brought onto site.

*Reason: To prevent deleterious material from contaminating the public highway in accordance with Policy W3.11 of the WLP and Policy M3.12 of the MLP.*

### **Contamination and Stability**

31. Development shall be undertaken in accordance with the 'Phase 2 Environmental Risk Assessment' (Job No. 103186) received by the WPA on 25 October 2012 and the 'Window Sampling and Trial Pit Investigation' received by the WPA on 23 April 2013.

*Reason: To protect users of the site and ground and surface water from pollution in accordance with Policy W3.5 and W3.6 of the WLP; Policy M3.8 of the MLP; and Policies NE17 and DWM1 of the MDLP.*

32. Development shall be carried out in accordance with the approved Materials Management Plan (Rev C) for Bulk Filling Works to Spoil Heap at Welbeck Colliery Meden Vale' (Job No. 121142) received by the WPA on 10 January 2013.

*Reason: To protect users of the site and ground and surface water from pollution in accordance with Policy W3.5 and W3.6 of the WLP; Policy M3.8 of the MLP; and Policies NE17 and DWM1 of the MDLP.*

33. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tank plus 10% or, if there is more than one container within the system, of not less than 110% of the largest container's storage capacity or 25% of the aggregate storage capacity of all storage containers. All filling points, vents and site glasses must be located within the bund. There must be no drain through the bund floor or wall.

*Reason: To protect ground and surface water from pollution in accordance with Policy W3.5 and W3.6 of the WLP, and Policy M3.8 of the MLP.*

### **Pedestrian Access and Rights of Way**

34. No recorded rights of way shall be restricted or obstructed in any way. No new structures shall be installed on any recorded rights of way. The widths of all existing recorded rights of way shall be maintained.

*Reason: To ensure the continued availability for use of all existing rights of way in accordance with Policy DM13 of the BCS.*

35. Prior to their implementation, construction details (including width and depth, and materials where relevant) of all paths, cycleways and bridleways shown on planning application Drawing No. 2012-PL001 Rev B shall be submitted to, and approved in writing, by the WPA. Construction shall thereafter take place in accordance with the approved details.

*Reason: To ensure the site is suitable for amenity after-use in accordance with Policy DM13 of the BCS.*

36. All proposed circular cycleway/bridleway and proposed woodland/grassland mown walks shown on Drawing No. 103186/P/004 Rev B titled 'Proposed Block Plan – Restoration' – received on 27 January 2012, shall be completed within 12 months of the cessation of waste and other fill material being placed, as notified under Condition 4.

*Reason: To ensure linkages are provided with the surrounding footpath network and that the site is suitable for amenity after-use in accordance with Policy DM13 of the BCS.*

37. Prior to their implementation, details of the proposed pedestrian access points (including any 'furniture' to be used) shown on Drawing No. 103186/P/004 Rev B titled 'Proposed Block Plan – Restoration' – received on 27 January 2012 shall be submitted to, and approved in writing by, the WPA. Construction shall take place in accordance with the approved details.

*Reason: To ensure suitable access to the site in line with its amenity after use, in accordance with Policy DM13 of the BCS.*

## **Soil Placement**

38. The WPA shall be notified in writing at least 5 working days before each of the following, where applicable:

- a) Overburden has been prepared ready for soil replacement to allow inspection of the area before further restoration of this part is carried out;
- b) When subsoil has been prepared ready for topsoil replacement to allow an inspection of the area before further restoration of this part is carried out; and
- c) On completion of topsoil placement to allow an opportunity to inspect the completed works before the commencement of any cultivation and seeding operations.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the MLP and Policy W4.5 of the WLP.*

39. Soils and overburden shall only be placed when they and the ground on which they are to be placed are in a dry and friable condition and no movements, re-spreading, levelling, ripping or loosening of overburden or soils shall occur.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the MLP and Policy W4.5 of the WLP.*

40. Plant and vehicles shall not cross any area of placed and loosened ground or replaced soils except where essential and unavoidable for purposes of carrying out soil placement, ripping and stone picking or beneficially treating such areas. Only low ground pressure machines shall work on prepared ground.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the MLP and Policy W4.5 of the WLP.*

41. Prior to the placement of soils and any overburden, the final profile of the site shall be ripped using overlapping parallel passes:

- a) To provide loosening to a minimum depth of 450mm with tine spacing no wider than 0.6m; and
- b) Any rock, boulder or larger stone greater than 100mm in any dimension shall be removed from the loosened surface before further soil is laid. Materials that are removed shall be disposed of off-site or buried at a depth of not less than 2 metres below the final contours.

Decompaction shall be carried out in accordance with the MAFF Good Practice Guide for Handling Soils Sheet 19: Soil Decompaction by Bulldozer Drawn Tines.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the MLP and Policy W4.5 of the WLP.*

42. Only low ground pressure machinery shall work on re-laid soils to place and level soils.

*Reason: To ensure the conservation of soil resources and the satisfactory restoration of the site in accordance with Policy M4.3 of the MLP and Policy W4.5 of the WLP.*

## **Aftercare**

43. Following restoration the site shall undergo aftercare management for a 5 year period.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the MLP and W4.9 of the WLP.*

44. Prior to any area being entered into aftercare the extent of the area and its date of entry into aftercare shall be agreed in writing with the WPA. The 5 year aftercare period shall run from the agreed date.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the MLP and W4.9 of the WLP.*



45. Within six months of the date of commencement of the development hereby permitted, an aftercare scheme and strategy including long-term design objectives, management responsibilities and maintenance schedules shall be submitted to the WPA for its approval in writing. The strategy shall include an Ecological Management Plan and shall cover, but not be restricted to, the following details:
- a) Cultivations;
  - b) Weed control;
  - c) Sowing of seed mixtures;
  - d) Soil analysis;
  - e) Keeping of records and an annual review of performance and proposed operations for the coming year, to be submitted to the WPA between 31 March and 31 May each year;
  - f) Drainage amendments;
  - g) Sub-soiling and under-drainage proposals;
  - h) Management practices such as cutting vegetation;
  - i) Tree protection;
  - j) Remedial treatments;
  - k) Irrigation; and
  - l) Fencing

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the MLP and W4.9 of the WLP.*

46. Whilst the site is in aftercare, site management meetings shall be held with the WPA each year to assess and review the detailed annual programmes of aftercare operations referred in Condition 45(e) above, having regard to the conditions of the land; progress in its rehabilitation and necessary maintenance.

*Reason: To provide for aftercare of the restored site, in accordance with Policy M4.9 of the MLP and W4.9 of the WLP.*

### **Alternative Restoration**

47. Should for any reason, placement of waste and/or construction fill material cease for a period in excess of 3 months, then, within 3 months of the receipt of a written request from the MPA, a revised scheme for the restoration of the site shall be submitted to the MPA for its approval in writing. Such a scheme shall include details of the final contours, provision of soiling, sowing of grass,

planting of trees and shrubs, drainage and fencing in a similar manner to that submitted with the application and modified by these Conditions and also provide details of the aftercare proposals and Ecological Management Plan in a similar manner to Condition 45 above. The revised restoration proposals shall be implemented within 12 months of their approval by the WPA and thereafter managed for a period of 5 years in accordance with the approved aftercare details.

*Reason: To secure the proper restoration of the site within an acceptable timescale.*

### INFORMATIVES

1. Attention is drawn to the letter from Network Rail dated 27 February 2012.
2. It should be noted that traffic on Netherfield Lane linking the A616 to the A614 can be exceptionally busy when there are events at Thoresby, but these are few and seasonal and an alternative route using the B6034 and the A57 to link the A1 could be used.
3. Some of the footpaths and cycleway/bridleway shown on Drawing No. 103186/P/004 Rev B titled 'Proposed Block Plan – Restoration' are outside of the planning application boundary of this permission. Should any of these footpaths and cycleway/bridleway constitute an engineering operation then separate planning permission will be required.
4. The Environment Agency has highlighted a number of points to note with the proposed development, including:
  - a) The site lies within the Idle and Torne CAMS catchment. As such, there will be no abstraction licences granted for any new consumptive licences at any time of the year from both the surface and groundwater.
  - b) The attenuation ponds are to be unlined to maximise infiltration. It is vital that the quality of the water is sufficient so as not to pose an environmental risk to the underlying strategic aquifer. The whole site falls within Source Protection Zone 3 (SPZ3) (total catchment) which is defined as 'The area around a source within which all groundwater recharge is presumed to be discharged at the source'.
  - c) The total storage area is calculated to be in excess of 21,000m<sup>3</sup>. If any of the ponds exceeds 25,000m<sup>3</sup>, then this structure would fall under the Reservoir Act 1975.