



Julie James MS
Minister for Climate Change
Welsh Government
Cathays Park, Cardiff

Copied to: Planning and Environment Decisions Wales (Penderfyniadau Cynllunio ac Amgylchedd Cymru) and Merthyr Tydfil County Borough Council

By email only: Correspondence.Julie.James@gov.wales;
planning.directorate@gov.wales; PEDW.Casework@gov.wales;
decisionsbranch@gov.wales; [REDACTED]@merthyr.gov.uk; [REDACTED]@merthyr.gov.uk

9 November 2023

Dear Minister

Urgent request concerning continued unlawful coaling at the Ffos-y-fran Land Reclamation Scheme, Merthyr Tydfil

I write further to our letter of 30 June 2023, to which we have had no reply, and to the continued unlawful coaling at Ffos-y-fran, Merthyr Tydfil¹. That coaling continues to cause serious and irrevocable harm to the climate. It is also causing alarm and distress to local residents and is seriously undermining public confidence in the planning system in Wales. You have the power to stop this - by issuing a stop notice - and we once again urgently ask that you do this. We also ask that you expedite the current enforcement appeal relating to the site, as any undue delays would only make matters worse. Finally, we ask that you seek urgent clarification from the mining company on when it intends to end coaling, given contradictory statements it has been making on this in recent months.

You will be aware of the background. Briefly, in September 2022 planning permission for the coalmine expired. Despite this the mining company, Merthyr (South Wales) Ltd (**MSWL**), continued to extract coal in breach of planning control. In April 2023 Merthyr Tydfil County Borough Council voted unanimously to reject MSWL's application to extend the planning permission beyond the September 2022 deadline. In May 2023, the council served an enforcement notice against the unlawful coaling. Such notices can be, and often are, appealed. Whilst an appeal is outstanding the notice in question has no effect. That is why we and others called on the council, and on you, to issue a stop notice. Such a notice would have halted extraction at the site until any appeal was decided. However, neither you nor the council used these powers and, as expected, MSWL appealed the enforcement notice, meaning it has no effect. This in turn means that MSWL cannot be prosecuted for breach of the enforcement notice, despite the continued coaling. And of

¹ With local community members continuing to inform us of ongoing activity this week – including loading onto trains.

course all the coal that is being extracted during the appeal process cannot be put back in the ground if the appeal ultimately fails or is withdrawn. The appeal, submitted in July 2023, is being handled by your officials in Planning and Environment Decisions Wales (**PEDW**). Their reference is CAS-02826-H3L1W0.

As stated in our previous letter, the appeal process can be heavily prolonged, with delays likely in validation, environmental impact screening, processing and then determination. Our previous prediction was that unlawful coaling was expected to continue until mid-2024, possibly even until 2025, unless a stop notice was issued. Unfortunately such predictions appear accurate. We understand for example that, despite the appeal being submitted in July, PEDW has given MSWL until late December 2023 to decide whether or not it will be submitting a revised environmental statement. If it decides to do so, it will then presumably be given a lengthy period within which to prepare and submit such a statement, all the time during which coaling will presumably continue, given MSWL's behaviour to date. In the circumstances it is clear to us that a stop notice is justified and that the appeal should be expedited.

We also draw your attention to contradictory statements by MSWL about when coaling will end. In July 2023, in its appeal papers submitted to you, MSWL requested planning permission to continue coaling until the end of March 2024. But the following month, in August 2023, MSWL apparently told the media it intends to stop by the end of November this year². This continued uncertainty is unacceptable, particularly for local residents opposed to the mine and at the sharp end of MSWL's breaches. If MSWL intends to go back on its November 2023 date, and continue to spring next year, we all have a right to know.

As you know we are in a worsening climate emergency. The continued coaling will add to this, to the detriment of current and future generations. It will also send a terrible signal that unlawful coaling is tolerated in Wales, despite your climate policies to the contrary. We therefore urge you to issue a stop notice, expedite the enforcement appeal, and seek urgent clarification from MSWL of its intentions.

Finally, you may be aware that the Coal Authority has issued an enforcement order against MSWL for mining outside of its licensed area³. In its letter of 27 September 2023 it rejected MSWL's claimed justification for carrying on the mining in breach of the licence. In fact, it said that MSWL's justification was neither well founded nor supported by evidence. We welcome that finding and the action taken in respect of the licensing breaches. We look forward to welcoming similar action by the Welsh Government in respect of the planning breaches.

Yours sincerely

Niall Toru

Niall Toru
Senior Lawyer
Friends of the Earth England, Wales and Northern Ireland

² <https://www.itv.com/news/wales/2023-08-15/controversial-coal-mine-announces-closure-date>

³ <https://www.gov.uk/government/publications/ffos-y-fran-enforcement-action>