

Examination

Hearing Session 9  
MINERALS & WASTE  
Tuesday, 25<sup>th</sup> May 2010 (Rhymney Room)

Miller Argent (South Wales) Limited  
Representor No. 1844

## STATEMENT



### Issues & Matters Raised by the Inspector for Consideration at the Mineral & Waste Hearing on 25<sup>th</sup> May 2010.

#### 1 Welcome and introductory remarks

##### Minerals

#### 2 Does the Plan satisfactorily translate national minerals planning policy down to the local level?

- Should the identification of minerals safeguarding areas in policy SP9 (i) be unqualified by references to the environmental etc. impacts of minerals working, (ii) refer to “resources” rather than “reserves” and to a minimum 10-year landbank?

2.1 Miller Argent’s response here reflects their interest as a member of the coal industry and refers to policy and guidance relating to coal. However, LDP policy has to remain consistent with such documents when referring to minerals in general.

- (i) The safeguarding of coal as a mineral is not so qualified in Minerals Technical Advice Note 2: Coal (MTAN2) or in Mineral Planning Policy Wales (MPPW). However, Paragraph 34 of MTAN2 states “*To identify areas for safeguarding, it is necessary that ...the location and quality of the mineral is known and that the environmental constraints associated with extraction have been considered.*” MTAN2 goes on to set out steps that will be considered as meeting that requirement. Those steps essentially involve the inclusion of Primary and Secondary coal resource zones as defined by the British Geological Society (BGS). MTAN2 states that “*there is no requirement for them [the local authority] to seek additional information and the existing lines defining seam outcrops and depth limits are sufficient.*” Consideration also needs to be given to excluding settlements and designations of National and International environmental and cultural importance and where there is “*clear evidence that an area within the remaining resource zones will not realistically be viable [examples of which are given], the area should be excluded.*”

The LDP should not introduce qualifications for safeguarding minerals that are not in accordance with National policy and guidance. The identification of the safeguarding areas should therefore be unqualified by references to environmental etc. impacts of mineral working.

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- (ii) Safeguarding areas relate to mineral ‘resources’, which are often unproven but potentially valuable with reasonable prospects for eventual economic extraction; rather than mineral ‘reserves’, which are usually proven to be of value and to be economically and technically feasible to extract. There is a significant difference between the terms and the Government has clearly been careful to refer only to resources in its mineral planning policy and guidance that deals with mineral safeguarding. The LDP should adhere to the same terminology to avoid misrepresenting such Government policy and guidance and to avoid misleading the reader.

This interpretation clearly disagrees with that given in the Authority’s justification for their change to Strategic Policy 9 – Minerals Safeguarding which states:

*“In the planning context “reserves” tends to refer to resources that have planning permission.”*

Miller Argent strongly disagrees with this interpretation as most reserves are proven to have value and to be technically and economically recoverable for considerable periods in advance of obtaining planning permission to work them.

Other than that, Miller Argent supports the proposed change to Policy 9.

- Are the coal and other minerals safeguarding areas identified under policy MN 2 adequate in extent? Should they extend right up to settlement boundaries and be identified on the Proposals Map? Should the coal safeguarding areas include the tertiary coal resource?
- 2.2 As a coal industry representative, Miller Argent supported Focused Change 19 to extend safeguarding areas up to settlement boundaries. MPPW and MTAN2 set out requirements for what should be shown on the proposals map. Those requirements can be summarized as follows:
- 2.3 The Proposals Map should show separately coal safeguarding areas, buffer zones and areas where coaling operations would not generally be acceptable. These areas are independent of each other and should be permitted to overlap each other on the map.
- 2.4 Whilst there are arguments for including tertiary coal resources on the proposals map, particularly where they have reasonable prospects for eventual economic extraction, MTAN2 only requires primary and secondary coal resources to be shown. Nevertheless, MTAN2 is not policy but technical advice. The Government policy statement on safeguarding at Paragraph 13 of MPPW states that “...policies should protect potential mineral resources from other types of permanent development which would either sterilise them or hinder extraction, or which may hinder extraction

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in the future as technology changes.” The technical advice in MTAN2 is therefore more specific and effectively excludes all tertiary resources from safeguarding areas. However, in Miller Argent’s view, such technical advice should remain subordinate to Government policy statements, which appears to permit all ‘potential mineral resources’ to be considered for safeguarding, placing emphasis instead on the need for consultation with the industry, other relevant bodies and associated authorities to establish the likely commercial viability of any resource. It would therefore appear that, if a tertiary coal resource can be considered to be economically viable, there would be a case for safeguarding it.

- Is reducing the extent of sand and gravel safeguarding areas under policy MN 2 compared to the MTAN 1: Aggregates map, so as to create separate buffer zones, justified?

2.5 No Comment

- Does the Plan adequately define buffer zones around all mineral sites, including dormant (inactive) sites and Bryn Quarry?

2.6 No. A buffer zone has not been provided around the Ffos-y-fran Land Reclamation Scheme, which incorporates an opencast coal mining operation. The scheme lies wholly within the county borough of Merthyr Tydfil, but the provision of a 500m buffer zone as stipulated in MTAN2, being the technical advice to accord with the policy requirement for buffer zones in MPPW, would extend into Caerphilly’s administrative area on Proposals Maps 2 and 4. This buffer zone should be shown.

- Does policy SP9 comprise an adequate strategy in relation to the area’s contribution to the regional demand for a continuous supply of minerals?

2.7 Policy SP9, as amended by the focused changes, only deals with minerals safeguarding. In terms of mineral safeguarding, the policy appears adequate. However, it is insufficient to terms of a strategy for contributing to the regional demand for a continuous supply of minerals.

2.8 Obviously, as an opencast coal operator, Miller Argent’s primary interests lie in the coal reserves and resources within the Ffos-y-fran and Nant Llesg areas. As such, it would expect to find policies that would appropriately facilitate a genuine contribution towards the regional demand for coal as an energy mineral. Such policy should recognize the presence of the well established and valuable coal resource at Nant Llesg and recognize the likelihood of that reserve coming forward within the plan period as a suitable indigenous fuel source for the South Wales power generating industry. As such, policy statements should go beyond simply safeguarding the reserve.

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2.9 Paragraph 12 of MPPW states:

*“As minerals can only be worked where they occur, it will be necessary for agreement to be reached by groups of authorities to determine the contribution each should make to meet regional needs. The contribution that a resource could make to regional and UK demand must be taken into account, and policies which seek to meet only local needs or which rule out all forms of mineral working within an area will only rarely be acceptable.”*

- 2.10 The Nant Llesg resource was identified in the British Coal Corporation privatization prospectus as containing some 12 million tonnes of Bituminous Coal. The coal, like that from the adjoining Ffos-y-fran Land Reclamation Scheme, is particularly suitable for power generation at Aberthaw. Presently, the annual burn at Aberthaw is approximately 3.5 million tonnes, of which between 0.75 million and 1 million tonnes per annum is to be supplied from the Ffos-y-fran Land Reclamation Scheme. The rest of the fuel stock continues to come from imports shipped in from elsewhere in the global market; clearly not in the interests of the National economy or the station's carbon footprint. Such a valuable reserve within the county borough, which is clearly capable of making such a positive contribution to both the National and regional economy, warrants appropriate recognition within the plan with firm policy statements providing a positive contribution towards the ongoing regional demand for a continuous supply of coal.
- 2.11 It is Miller Argent's firm view that such a valuable and major resource should be individually recognized within the plan and allocated as a Potential Mineral Working Site (Coal).
- **Is there a need for a policy setting criteria for considering proposals for minerals working?**
- 2.12 In addition to the points made in response to the preceding question, a policy setting criteria for considering proposals for minerals working is essential if the plan to realistically facilitate a contribution to the regional demand for a continuous supply of minerals. It is also a requirement of MPPW.
- 2.13 Paragraph 15 of MPPW states that mineral planning authorities *“...must provide as much guidance in their unitary development plans as possible to indicate where it is likely to be environmentally acceptable for these resources to be worked. To achieve this degree of certainty, policies should state where such operations would not be acceptable and should provide unequivocal statements as to why, **and should also provide a set of clear criteria against which any future proposals will be assessed in those areas where there is a possibility of extraction.**”* (our emphasis).

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- 2.14 Given the recognition of the 12 million tonne Nant Llesg resource in the British Coal privatization prospectus and the interests and concerns already expressed by the coal industry and Coal Authority, it has to be accepted that the resource offers realistic prospects of being technically and economically viable. The interest expressed by Miller Argent alone as a coal operator is clear evidence of the possibility of a planning application for extraction coming forward. It is therefore essential that the LDP contains a set of clear criteria against which any future proposals can be assessed.
- Should the Plan identify specifically those areas where coal operations would not be acceptable?
- 2.15 As stated above, MPPW requires that mineral planning authorities “...*must provide as much guidance in their unitary development plans as possible to indicate where it is likely to be environmentally acceptable for these resources to be worked. **To achieve this degree of certainty, policies should state where such operations would not be acceptable and should provide unequivocal statements as to why...**”.(Our emphasis).*
- 2.16 In doing this, the mineral planning authority should also be mindful of Paragraph 12 of MPPW which states: “*As minerals can only be worked where they occur, it will be necessary for agreement to be reached by groups of authorities to determine the contribution each should make to meet regional needs. **The contribution that a resource could make to regional and UK demand must be taken into account, and policies which seek to meet only local needs or which rule out all forms of mineral working within an area will only rarely be acceptable.**”(Our emphasis).*
- Does the plan adequately set out a strategy for the future use of all dormant mineral sites, in line with MPPW Para 19?
- 2.17 In the case of coal, Miller Argent isn't aware of any inactive sites with planning permission for future working within the county borough. Miller Argent wishes to make no comment on other mineral sites.
- Is there a need for a policy concerned specifically with onshore gas (Coal Bed Methane) extraction?
- 2.18 No Comment

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- Are the provisions of the Plan sound in relation to the Nant Llesg area north of Fochriw? Does the absence of an allocation of the Nant Llesg site for mineral development make the Plan unsound?



**Are the provisions of the Plan sound in relation to the Nant Llesg area north of Fochriw?**

### **CW8 Natural Heritage Protection**

- 2.19 Miller Argent does not object to the designation of parts of the Nant Llesg area as a Site of Importance for Nature Conservation (SINC), but to the wording of Policy CW8 B (ii) which is not consistent with national policy.
- 2.20 The policy states that development proposals that affect locally designated natural heritage features, will only be permitted within or in close proximity to sites designated as, *inter alia*, Sites of Importance for Nature Conservation (SINC):
- “Where the need for the development outweighs the ecological importance of the site, and compensatory provision is made, of the same standard and size to that lost as a result of the development...”*
- 2.21 This goes well beyond the requirement of Planning Policy Wales (para 5.5.2) which is that:
- “...authorities should seek to minimise those effects and should, where possible, retain and where practicable, enhance features of conservation importance.”*
- and the requirement of Technical Advice Note (TAN) 5 Nature Conservation and Planning (para 5.5.3) that:
- “Where harm is unavoidable it should be minimised by mitigation measures and offset as far as possible by compensation measures designed to ensure that there is no reduction in the overall nature conservation value of the area or feature....”*
- 2.22 Miller Argent has proposed a revision to the wording of Policy CW8 B (ii) which accords with the relevant national guidance.

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**NH1.1 – Upper Rhymney Valley SLA**

- 2.23 Planning Policy Wales notes that local landscape designations should only apply to areas of “**substantive conservation value** where there is good reason to believe that normal planning policies cannot provide the necessary protection. Such designations should not unduly restrict acceptable development.” (paragraph 5.3.11).
- 2.24 The Council’s analysis of Miller Argent’s objection to NH1.1 states that “SLA and VILL designations are not necessarily a constraint to development but are intended to ensure that the landscape value of the area is given full consideration. In some cases this may mean that areas of **low landscape value** may be included within a designation because it would benefit from positive management to improve its quality and to ensure that the land would benefit from high quality restoration if development takes place”. This is not supported by Planning Policy Wales which states that local landscape designations should only apply to areas of “**substantive conservation value**” (paragraph 5.3.11) or CCW Guidance Note 1 which states that “*Special Landscape Areas ..... define areas of **high** landscape importance*” (section 3). The area in the north of the Nant Llesg site included in the SLA does not constitute an area of high landscape importance which is unique, exceptional or distinctive to the local authority area and therefore should be excluded from the SLA.
- 2.25 In some instances it may be necessary to include land within a designated area which does not meet the criteria for designation in order to define defensible boundaries. However, the extent of land included in the Upper Rhymney Valley SLA which does not meet objective criteria for designation is far beyond that which would be needed to achieve such boundaries. In any event, the boundaries in some areas seem to be entirely arbitrary and indefinable on the ground. A clear example is the boundary between the Upper Rhymney Valley SLA and the Northern Rhymney Valley VILL which crosses the Nant Llesg site from east to west and does not relate to any features on the ground.

**NH2.1 – Northern Rhymney Valley VILL**

- 2.26 The draft LDP identifies NH2.1 Northern Rhymney Valley VILL in the area of the Nant Llesg site. Visually Important Local Landscapes (VILLs) are described in Background Paper 2, paragraph 5.2.1, of the LDP as “...*areas of the county borough that are considered visually important as a backdrop or setting for settlements and need additional protection from inappropriate development.*” The Council’s position is that “*VILLs are a non-statutory local designation, and as such have an equal weighting in policy terms to SLAs*” (Draft LDP Background Paper 2: Natural Heritage para 5.2.1).



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- 2.27 CCW Guidance Note 1 relates to all locally designated landscapes, and for the purpose of guidance the note refers to them all as Special Landscape Areas. The Guidance note does not split the landscape into different aspects and consider these separately, as has been done in the case of Caerphilly designating VILLs.
- 2.28 The Council claim to have identified VILLs “*using the same approach and criteria as the SLA designation criteria*” (Background Paper 2, paragraph 5.2.5). However, they have used evaluations of Moderate and above on the Visual and Sensory layer of the LANDMAP data. This is in contradiction to CCW Guidance Note 1, which states that “*Special Landscape Areas are a non-statutory designation applied by the local planning authority to define areas of **high landscape importance***” (section 3). The overall evaluation of the relevant Visual and Sensory aspect areas are only Moderate and therefore, the area of VILL identified in the south of the Nant Llesg site should not be so designated.
- 2.29 The draft LDP notes that as a result of the LANDMAP method of identifying potential SLA’s “*a number of important landscapes were no longer designated in the LDP*” (Background Paper 2, paragraph 5.2.2). However, in the Nant Llesg area, the Council has not just identified areas that were previously designated as SLA, but has extended the VILL designation to include large areas of previously undesignated land.
- 2.30 In some instances it may be necessary to include land within a designated area which does not meet the criteria for designation in order to define defensible boundaries. However, the extent of land included in the Northern Rhymney Valley VILL which does not meet objective criteria for designation is far beyond that which would be needed to achieve such boundaries.

RPS



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**Does the absence of an allocation of the Nant Llesg site for mineral development make the Plan unsound?**

- 2.31 Regard should be given to the Nant Llesg land (identified by Miller Argent in its deposit draft representations – Site Ref: MN99.1) as an areas where it is possible to remediate part of the land damaged by shallow coal workings or mine waste; where there are consequent health and safety issues presently exhibited by recent collapses into previously hidden voids and shafts on the urban common; and where there is a possibility of any overriding significance for regeneration, employment and economy of the local area; all of which are implicit in the prospect of developing the Nant Llesg coal resource.
- 2.32 There are strong arguments for allocating this land on the proposals map for mineral coal extraction, as put forward in Miller Argent's previous representation on the Deposit Draft.
- 2.33 Firstly, the value of the coal as a National asset cannot be denied. There has been more than sufficient evidence put forward during the LDP process to support its status and value as a strategic UK coal resource of current importance and there is now a strong possibility that the reserve will be required within the plan period. As an important indigenous energy resource, it should be allocated for possible development within the plan period.
- 2.34 Secondly, the purpose of safeguarding coal is to protect it from being sterilized by incompatible development during the plan period. The premise of such protection has to be that the resource is eligible to be worked at some time in the future. The majority of coal resources safeguarded in the Caerphilly Draft LDP are reserves that are, as yet, unsupported by mineral developers. By contrast, Miller Argent has made clear its interest in the Nant Llesg coal resource, which has also been identified by the Coal Authority to be of "...strategic importance to Wales and possibly the rest of the UK as it has the proven potential to provide a much needed energy source for the medium term future from indigenous coal production at a time when the UK will be heavily dependent upon coal production to provide electricity...". Such interests and comments serve to identify that this reserve might well be worked within the plan period. Not to allocate it for potential coal working within the plan falls short of the essential role of the planning authority to strike a balance between the fundamental requirement for society's need for coal; the need to ensure a prudent use of a finite resource; and the protection of existing amenity and the environment (MPPW Para 10).
- 2.35 Allocation within the plan would recognise the need for the coal, whilst the requirement for subsequent consideration and determination of a planning application with its associated environmental impact assessment would serve to protect the existing amenity and environment. Not allocating it within the plan would appear to indicate the

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Authority's predisposition to dismiss the need to work this valuable reserve without properly considering it. Without doing so, the requisite balance can't possibly be struck.

- 2.36 To support its allocation in the LDP, Miller Argent confirms that it is now intended that the Nant Llesg reserve be evaluated in detail and a planning application put forward in the early part of the plan period. The attached Drawing MA/CAER/LDP/02 delineates an area for allocation in the LDP as 'Land for Mineral Development - Coal'. Within the boundary depicted on the drawing, mining operations of any proposed opencast coal workings would be concentrated in the northern part of the site with overburden storage being generally to the south of the working void. The southern boundary has also been extended southwards to accommodate reclamation of the derelict land identified in the current UDP and the former Rhymney Valley District Council's Local Plan.
- Is FC14 (MN1.2 Hafod Quarry Buffer Zone/MN99.3 Hafod Quarry Mineral Safeguarding Area/NH2.3 VILL Abercarn) necessary in the interests of Plan soundness? Is it sufficiently clear that FC14 also proposes changes to the extent of VILL and SLA designations in relation to other mineral working sites in the county borough? Have these other changes been adequately identified and advertised?
- 2.37 FC14 focuses on a specific area of the proposals map. As such, the global application made in the last sentence of the published change is not readily apparent to a reader who might not be interested in this specific area. In Miller Argent's view, the change should primarily deal with the global issues first and list specific VILLs and mineral working sites that are directly affected afterwards.
- 2.38 The change purports to deal with VILLs only. However, the stated justification raises a question whether there should be any differentiation between VILLs and SLAs in its application.
- 2.39 However, in considering the global application of VILLs and SLAs, Miller Argent would again refer the Inspector to our comments made at paragraphs 2.19 to 2.31 above.

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### Waste

**3 Does the Plan satisfactorily translate national and regional waste policy down to the local level?**

- Does the Plan adequately translate the provisions of the Regional Waste Plan (RWP) down to the level of Caerphilly Borough, and demonstrate how the policies and proposals of the Plan help to facilitate implementation of the RWP?

3.1 Miller Argent's interest in this subject is restricted to the proposed allocation of the Cwmbargoed Disposal Point as a Waste Management Facility (WM1.1). Although not contained in their focused changes or their additional focused changes, the Authority submitted a Supplementary Paper (ED17) on 26th January 2010, which now proposes the re-allocation of the site as a Specific Mixed Use Employment Site - MU1. They also entered into a Statement of Common Ground with Merthyr Tydfil County Borough Council for Cross Boundary Policy Co-ordination (ED24) on 28th January 2010. In brief, the effect of this agreement is to propose that the whole of the disposal point (which straddles the county borough boundary) is similarly allocated in the LDPs of both administrations

3.2 Miller Argent is in agreement with these proposals and is happy to enter into Statements of Common Ground with both Authorities to that effect.

- Does the evidence base provide sufficiently detailed and specific information about current and anticipated waste arisings; existing and foreseeable arrangements to deal with the different waste streams; and the consequent land-use and spatial requirements of future waste management arrangements, to demonstrate the adequacy and deliverability of the Plan's waste policies?

3.3 No Comment

- Is policy SP11 founded on a sufficiently robust evidence base? Are its provisions demonstrably adequate, sufficiently clear, realistic and deliverable?

3.4 No Comment

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### 4 Policy WM 1 (HOVRA) – Cwmbargoed Washery Site

- Is the policy founded on a robust evidence base?
  - 4.1 Although not contained in their focused changes or their additional focused changes, the Authority submitted a Supplementary Paper (ED17) on 26th January 2010, which now proposes the re-allocation of the site as a Specific Mixed Use Employment Site - MU1.
  - 4.2 Having initially fallen foul of certain misconceptions about the land available for waste management use at the Cwmbargoed Railhead, the proposed change in policy to allocate the disposal point as a Specific Mixed Use Employment Site is now founded on robust evidence of the availability, suitability and deliverability of the site for the proposed new allocation. The agreement of the neighbouring Authority on this matter clearly supports the Authority's case.
- Does the proposal fit with the waste strategy of neighbouring authorities?
  - 4.3 The Authority has since proposing the site for re-allocation as a Mixed Use Employment Site entered into a Statement of Common Ground with Merthyr Tydfil County Borough Council for Cross Boundary Policy Co-ordination (ED24) on 28th January 2010. In brief, the effect of this agreement is to propose that the whole of the disposal point (which straddles the county borough boundary) is similarly allocated in the LDPs of both administrations
- Is the policy realistic and deliverable?
  - 4.4 As owners and operators of the Cwmbargoed Disposal Point and the Cwmbargoed Railhead, Miller Argent is of the opinion that the revised policy to allocate the site as a Mixed Use Employment Site is both realistic and deliverable.
- Is the proposal consistent with emerging LDP allocations for that part of the site within Merthyr Tydfil CBC?
  - 4.5 As stated previously, the revised proposal to allocate the site as a Mixed Use Employment Site has been the subject of written agreement in the form of a Statement of Common Ground with Merthyr Tydfil County Borough Council. It is now proposed that the emerging allocations in their respective LDPs reflect the same proposed use. Consequently, cross-boundary consistency on the matter is now provided for.

## Caerphilly Local Development Plan

### Examination

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**Miller Argent (South Wales) Limited**  
Representor No. 1844

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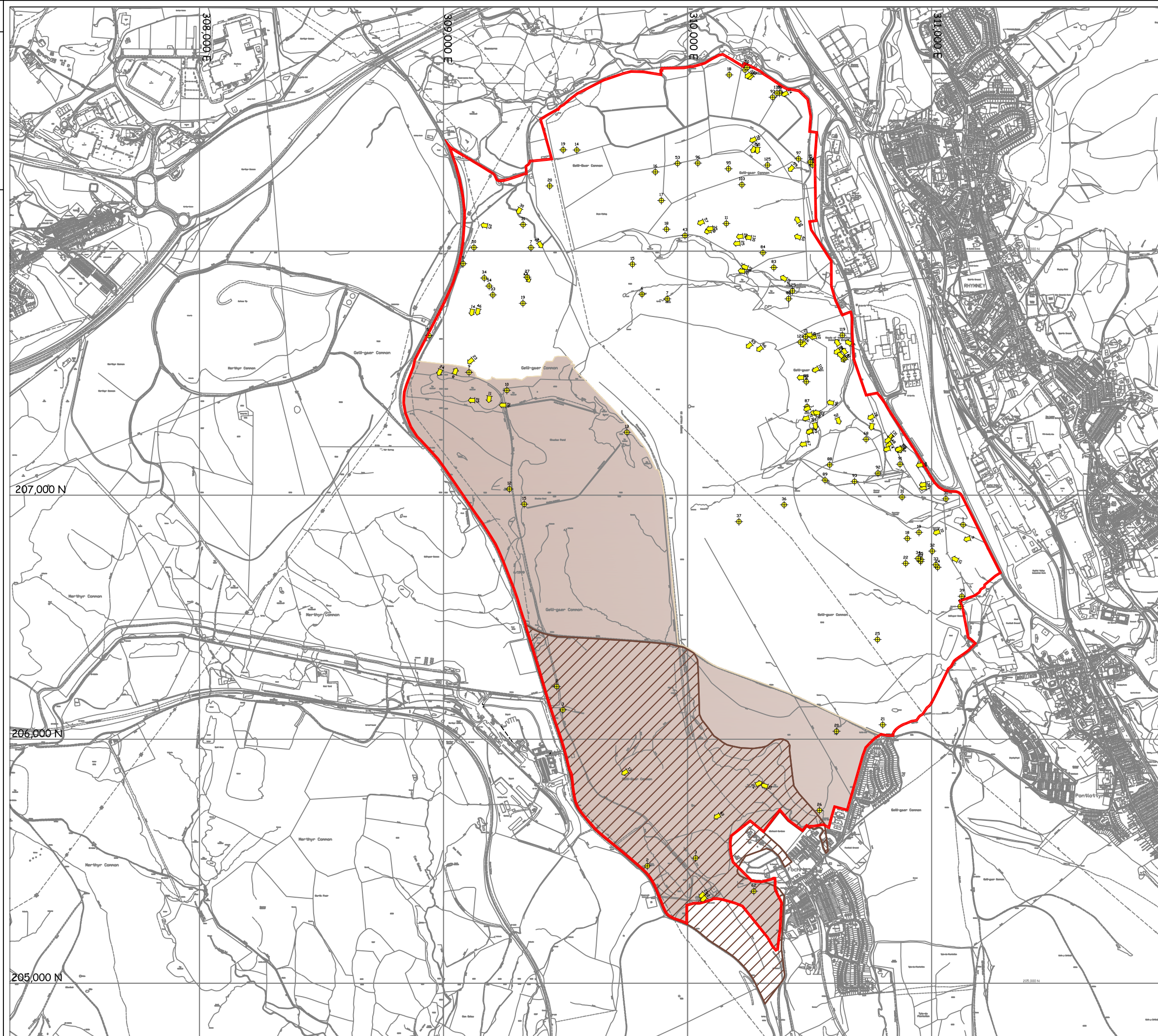
- Should the policy be replaced by one allocating the Cwmbargoed Washery site in mixed-use terms, including for Waste Management Facilities?
- 4.6 For the reasons stated in the preceding paragraphs, Miller Argent supports the replacement of Policy WM1.1 with the Authority's proposed Policy MU1 allocating the Cwmbargoed Disposal Point in mixed-use terms, including waste management.

### **5 Bryn Quarry Waste Transfer Station and Composting Facility**

- Does the absence of identification of the Bryn Quarry site as a waste facility under policies SP11/WM 1 render the Plan unsound?
- 5.1 No Comment
- Is the nature and use of the site such that its inclusion within a Special Landscape Area under policy NH 1 is unsound?
- 5.2 No Comment

Submitted on behalf of  
Miller Argent (South Wales) Limited  
6<sup>th</sup> April 2010





**LEGEND**

- Land Allocation for Mineral Development - Coal
- Derelict Land identified in Caerphilly Unitary Development Plan and Rhymney Valley District Local Plan
- Caerphilly County Borough Council Proposed Fochriw Reclamation Scheme - Phase 1
- + Disused Shaft
- ↑ Disused Adit

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Rev	Description of revision	Auth	Chkd	App	Date

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**Nant Llesg**

**Caerphilly Draft  
Local Development Plan  
Land for Mineral Development - Coal**

Designed R.JL	Drawn MB	Checked
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CAD/Dos filename:

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