

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

17 March 2017

Report of the Strategic Director – Economy, Transport and Communities

- 1 PROPOSED SURFACE COAL MINING SCHEME WITH RESTORATION TO AGRICULTURE AND NATURE CONSERVATION BENEFITS AT HILLTOP FARM, DERBY ROAD, CLAY CROSS
APPLICANT: PROTECTUS REMEDIATION LIMITED
CODE NO: CM4/1215/125**

4.2482.6

Introductory Summary This is an application for the extraction of coal using surface mining methods on land at Hilltop Farm, Clay Cross. The proposal is to extract 175,000 tonnes of coal from the site. The site would be restored for agricultural use and nature conservation. The entire scheme would take approximately 3½ years. Access to the site would be from the A61 Derby Road. HGV movements associated with the development would be a maximum of 40 (20 in/20 out) per day during periods of coaling. The two public rights of way (PROW) that cross the site would temporarily be affected. The development would involve the removal of some of the sites existing hedgerows and trees. The application is accompanied by an Environmental Statement (ES).

A significant issue for this proposal is the proximity of the site to residential properties, the separation distance between the site and some properties is very limited for this type of development. The application site is a wedge of open countryside that helps to separate Clay Cross from Old Tupton and is valued locally. The proposal would result in unacceptable adverse landscape and visual impacts during the operational phase of the development. There would also be unacceptable short term noise impacts during temporary site operations. Due to the limited separation distance between the site and properties, dust is also likely to be an issue. The cumulative impacts of the development, particularly the combined effects of landscape and visual impacts, noise and dust are considered to be so significant in combination as to render the proposed development unacceptable. There are also concerns about the impact of the proposal on the regeneration aspirations for Clay Cross; the proposal would have a net negative socio-economic effect.

The application describes the proposed restoration works as providing an opportunity to improve the quality of the land by following a soil restoration strategy and the implementation of a comprehensive land drainage scheme.

Other benefits of the development are described in the application as including direct employment opportunities, local and regional economic benefits, meeting the need for coal supply, flood alleviation, provision for funding of a Multi-Use Games Area (MUGA) and related toddlers' park, improvement to allotment fencing, ecological and landscape enhancements, and the provision of a significant new PROW.

The site is already in productive agricultural use and there are not any substantive restoration benefits in terms of agricultural land quality. There would be some landscape and visual and ecological benefits but these are considered to be very minor and could be delivered by other means. There would be some visual benefit through the proposed planting to screen views of the Derby Road Industrial Estate and potentially some flood alleviation benefit. The proposal would also be of some economic benefit; however, this is not considered to be significant when balanced against the proposals potential for net negative socio-economic effect. The applicant's proposed off-site community recreational benefits do not appear to have any sufficient connection with the proposed development to be relevant and are not a material consideration for this proposal. The main benefit of the proposal would be the delivery of coal from the site which would be of some national benefit but it is considered to be very modest.

Overall, the benefits of the proposal when set against the scale of adverse environmental, economic and social impacts would not outweigh the impacts to justify the grant of planning permission. The proposal would not represent sustainable development and would not accord with the National Planning Policy Framework (NPPF) or with policies of the Derby and Derbyshire Minerals Local Plan (DDMLP) and the North East Derbyshire Local Plan (NEDLP). Whilst it is considered that the proposal is suitable for refusal, the applicant has made an appeal submission to the Secretary of State against non-determination of the application for the proposal.

(1) **Purpose of Report** To enable the Committee, on behalf of the County Council as Mineral Planning Authority (MPA), to express a view concerning the application, which may be referred to in submissions for the appeal application which the applicant has made under Section 78 of the Town and Country Planning Act 1990 against non-determination of the application.

(2) **Information and Analysis**

The Site and Surroundings

The proposed opencast extraction site at Hilltop Farm covers an area of 28.6 hectares (ha) and is currently in agricultural use. The site is situated immediately north-west of Clay Cross between the settlements of Holmgate and Woodthorpe to the west and the A61 main road to the east. The site runs north-south between the village of Old Tupton to the north and Clay Cross to

the south and is approximately 1.5 kilometres (km) long. The site is bounded by residential areas to the north, south, and west, the A61 (Derby Road) to the east, and industrial and commercial developments to the south-east. Some of the closest residential properties to the site are located on Woodland Way to the west and Peters Avenue to the south approximately 40 metres (m) from the site and on the A61 Derby Road approximately 30m from the site; there is also a dwelling at Hilltop Farm on Derby Hill immediately adjacent to the site. Tupton Hall School is located approximately 450m to the north-east.

The land runs along a moderate ridgeline sloping gently south to north. The highest part of the site (145 above ordnance Data (AOD)) is in the central area in the vicinity of Hilltop Farm, the site is on higher ground relative to the surrounding residential areas. The site is currently subdivided in field parcels by hedgerows with a number of mature trees and is used as both arable and grazing land.

The site is located within Flood Zone 1 (i.e. Lying outside of the floodplain) and is underlain by a Secondary Aquifer (The Coal Measures Strata) but is not located within a Source Protection Zone. There is a minor watercourse (referred to as Watercourse 1 in the application) that passes through the northern section of the site and a second watercourse (Watercourse 2) just outside to the south-west of the site.

Two public rights of way (PROW) (Clay Cross footpaths 23 and 26) cross the site both in an approximate west to east direction. A section of the former Stretton and Ashover light railway passes through the site in a north-easterly direction from Holmgate Road in the south to the buttress of the former Pirelli Bridge north of Hilltop Farm on the A61. There are overhead electricity lines across the southern part of the site, there are also two underground low voltage lines and two underground gas mains present within the site. Two large water mains run from north to south across the entire site and there is a public sewer located adjacent to the western boundary.

There are no international or national ecological designations within the site. Internationally designated sites (Natura 2000 sites) within 10km of the site include the Peak District Moors Special Protection Area (SPA) and the South Pennine Moors Special Area of Conservation (SAC). Ogston Reservoir Site of Special Scientific Interest (SSSI) and Fall Hill Quarry SSSI are located approximately 2.8km and 3km to the south-west of the site. The North Wingfield Nature Reserve and the Avenue Nature Reserve are located 1.3km and 1.6km to the east of the site. There is a Local Wildlife Site (LWS) (Far Tupton Wood) located to the west approximately 100m from the site, Cowlshaw Wood and Carr Plantation LWSs are located 500m and 800m to the north-west, there is a potential Local Wildlife Site (pLWS) Mulberry Woods and Berresford Moor Plantation 250m to the north-west.

There are no designated heritage assets within the site. The route of the Rykniel Street, a Roman road, loosely follows the route of the A61 to the east of the site; sections of the Rykniel Street are a Scheduled Monument the closest being located approximately 150m to the north-east. There are two grade II listed buildings located to the north-east, Pear Tree House approximately 50m and Egstow Hall approximately 150m from the site. The grade I listed Church of St Lawrence is located approximately 1.5km to the east. The northern extent of the Clay Cross Conservation Area is located approximately 250m to the south of the site. The route of the former Stretton and Ashover light railway, runs through the site along part of the western boundary before turning north-east through the centre of the site to meet the buttress of the former Pirelli bridge north of Hilltop Farm.

There are four main coal seams within the application site, the Tupton Coal, Three quarters Coal, Yard and Cannel (Blackshale). The application site has been subject to historic deep mining and opencast operations during the late nineteenth and early twentieth centuries. Deep mining to work the Cannel coal seam is known to have taken place at the southern end of the site and has resulted in the presence of seven remnant mineshafts in the area, although their exact location is currently unknown. Some shallower deep mining, to extract the Old Tupton coal seam, also took place across the area of the two northern fields. One mineshaft associated with these workings is known to remain.

Opencast coal extraction, which worked the Tupton and Three Quarters seams towards the east and the Yard and Cannel seams to the west, also took place at the southern end of the site and these workings were completed by 1955.

Background Information

This application is a resubmission of a recent planning application for surface coal mining at this site. The previous application (code No. CM4/1014/79) was submitted in October 2014. This application was not determined by the County Council as, in the course of preparation for determination, it was discovered that at the time of submission some of the owners and occupiers of land affected had not been served with notices under Article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO), that was in force at that time. In light of this, the application was not considered to have been duly made.

The applicant has submitted a replacement application and served the relevant notices on the owners and occupiers of land affected as required by the superseding Town and Country Planning (Development Management Procedure) (England) Order 2015. The replacement application is for the same development as previously proposed, except for a change to the location of the site offices and welfare accommodation.

The Proposed Development

The proposal would involve the extraction of approximately 175,000 tonnes of coal from the site using surface coal mining methods, to a depth of up to 30m, with progressive restoration of the site back to agriculture including ecological enhancement. The entire scheme would take approximately 3 ½ years, the site preparation works would take 2 months to complete, the coal would then be extracted over a 3 year period with a further 4 months to complete the site restoration works. The application states that the extracted coal would be destined for both commercial and domestic use.

The coaling and backfilling operations would be divided into 19 phases or cuts. The site would be worked from north to south with cut 1 being northernmost and cut 19 southernmost. Operations would commence with the removal of soils from cuts 1 to 3 and from proposed storage areas. These soils would be stored along the site boundary and around the processing yard area. The soils would be formed into bunds designed to function as screening and noise attenuation bunds. Top soil and sub soils would also be stored in two storage mounds to the west of the site. The coal processing area, site compound, site office and welfare facilities would be located centrally within the site close to the existing Hilltop Farm buildings. Coal extraction operations would commence in cuts 1 and 2, and at the end of each phase of extraction, the void would be infilled with overburden from the next phase, thereby enabling the site to be restored on a progressive basis.

Water management facilities would be located to the west of the site. Two attenuation lagoons would be created along the western side of the site. In addition to rainfall collecting in the working area, the applicant anticipates that groundwater would also be present at 6m below ground levels; any water encountered would be pumped out of the excavations. The pump would operate continuously throughout the development. Water would initially be pumped to the first lagoon before being passed into the second lagoon to allow the settlement of suspended solids prior to final discharge into the watercourse in the south-west of the site. Improvement works to the watercourse to the south-west are proposed in the application so that it is suitable to receive discharge from the lagoons and to provide longer term benefits.

The development would involve the removal of some of the sites existing hedgerows and trees. Approximately 1km of hedgerow would be affected by the development; 9 of the 28 mature trees identified on the site and 3 of the 24 groups of trees would be lost and a further 2 partially lost. It is proposed to translocate 483m of hedgerow to receptor sites to the southern and south-eastern boundaries of the site and land to the west. The restoration scheme proposes compensatory planting for the trees and hedgerows that would be lost.

The two PROW that cross the site would temporarily be affected. Footpath 23 would remain open throughout the development with a crossing point installed over an internal haul road for approximately 15 to 18 months. Footpath 26 would be diverted prior to the commencement of works in phase 13 for the remainder of the coaling operations until the site is restored, when both footpaths would be reinstated.

Processed coal would be transported from the site using Heavy Goods Vehicles (HGVs). Access to and from the site is proposed from the A61 Derby Road via land in the ownership of Indimmo N.V. (Belgium) and known as the former Incomol site. It is proposed to access the site via a spur from a new roundabout on the A61 that has recently been constructed as part of an adjacent Silkston development site (the former Bi-waters site) on the eastern side of the A61. This site is currently being developed for a mix of residential housing (980 homes), commercial and leisure uses, with an extensive area of public open space. The access would be reconfigured and the bell mouth upgraded so that it is suitable for HGVs. An internal haul road would be constructed to connect the site access point to the coal processing area. Wheel wash facilities and a weighbridge would be located close to the access point. Internal car parking for site employees, a site office and canteen building would be provided on site to the south of Hilltop Farm. The buildings, weighbridge and wheel wash would be removed from site following the completion of the development. A temporary bridge would also be constructed over the watercourse in the north of the site between cuts 4 and 5.

HGVs associated with the development would approach the site via the M1 and the A6175 through North Wingfield. The route would then travel through Clay Cross and onto the A61 before turning left into the site. HGVs leaving the site would take the same route in reverse. HGV movements associated with the development would be a maximum of 40 (20 in/20 out) per day during periods of coaling.

The proposed hours of operations would be between 0700 hours and 1900 hours Monday to Friday and 0700 hours and 1300 hours on Saturdays with no working on Sundays or national holidays. The development would create 15 jobs. The applicant states that it intends to secure as many local jobs as possible.

Following completion of the coaling operations, the proposal is to restore the site back to agricultural use with nature conservation benefits. The restoration strategy is designed to improve the overall quality of the land and return it to agricultural uses. The ground levels and overall landform of the restored site would be based on those existing prior to development; the final land level would be up to 2m higher than current levels in some areas, no infill materials would be imported to site for use during restoration. The restoration scheme intends to provide for the restoration of land to enhanced agricultural quality, improved drainage, implementation of a soil restoration strategy, ecological

enhancement through habitat creation and species rich planting, provision of land to facilitate aspirations for the future construction of a multi-user trail and footbridge across the A61 to access a proposed country park.

The applicant is also proposing an off-site MUGA and a toddlers' play area on land to the east of North Street, Holmgate. The applicant, in its supporting statement, anticipates them being delivered through a community gain fund administered by a liaison group to be agreed through a legal agreement with the County Council.

Environmental Statement

The application is accompanied by an ES which includes a description of the site and its setting, a description of the scheme of development, a planning policy context, and baseline information and technical reports prepared by specialist consultants relating to noise, air quality, landscape and visual amenity, ecology and conservation, traffic and transport, archaeology and cultural heritage, the water environment (including hydrology and hydrogeology), flood risk, soil resource and land use and impact on PROW. The ES also considers energy supply and the need for coal, socio-economic and cumulative effects and alternatives to the scheme of development.

The submitted ES incorporates further and additional information that was requested by the Council under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regulations) in January 2015 in relation to the original application.

The applicant submitted further and additional information relating to transport and access, and to hydrology and flood risk in August 2016 following a further request by the Council under Regulation 22 of the EIA Regulations.

On 12 October 2016, the Council made another request for further information in relation to water under Regulation 22 of the EIA Regulations. Additional material about water was subsequently provided by the applicant's agent via a document marked as a draft (shortly before the appeal submission referred to below), but the applicant's agent (contrary to a view expressed on behalf of the Council) has not regarded this as amounting to the Council receiving information additional to the ES for the purpose of Regulation 22.

In February a view was taken on behalf of the Council that it should proceed on the basis that the additional material did comprise information received by the Council which by Regulation 22 had to be publicised. A notice has therefore been published which refers to a 21 day period for any representations on the information (ending on 16 March).

The overall conclusion of the ES and further information that has been submitted to date is that the proposal would not give rise to unacceptable

environmental effects and that the potential benefits of the scheme would outweigh any negative harm that might result from the proposal. The environmental impact of the proposal and the conclusions of the ES and further information are considered in more detail in the 'Planning Considerations' Section of this report.

Appeal Submission

In December 2016, the applicant, on the basis that the application had not been determined within the time allowed for under regulations, made an appeal submission to the Planning Inspectorate with a statement of case and supporting documents.

In a subsequent letter on behalf of the Council to the Inspectorate, the Inspectorate was asked to consider whether any appeal should proceed, since officers believed that, as a consequence of its October 2016 request for further information and Regulation 22, the Council at the time of the submission was unable to reach a determination of the application. However, a message of 3 March 2017 from the Inspectorate has indicated that the applicant does have a right to appeal at this time.

Consultations

There have been five rounds of consultations in relation to this proposal; two were carried out on the originally submitted application in October 2014 and May 2015, and three on the replacement application in January and August 2016 and February 2017. The responses that have been received are detailed below.

Local Member

Councillor Wright (Clay Cross North) has been consulted.

Local Member (Adjacent ward)

Councillor Gillott (Clay Cross South) has not provided any comments in relation to the current application but did make the following comments in relation to the original application.

“As the member for the Clay Cross South Division I would object to this application. The proximity of the proposed site is too close to the neighbouring housing such that the adverse impact on the community outweighs any benefit that may arise from the proposal”.

North East Derbyshire District Council (NEDDC) – Planning Comments

NEDDC has provided three letters of response in relation to the application, all providing similar comments and objecting to the proposal for the following reasons:

- *“The site comprises an area of open countryside between the settlements of Clay Cross and Tupton. The despoliation of this area of land for open cast coaling would bring no lasting benefits to the area, have an overriding and adverse impact on the character and appearance of this countryside location, be a prominent intrusion into, and not in keeping with the character of the countryside, remove the current strategic gap between Clay Cross and Tupton and therefore be contrary to policies GS1 and GS6 of the North East Derbyshire Local Plan.*
- *Approval of the proposal would result in additional traffic movements off, onto and along the A61. The A61 is currently under pressure from high levels of existing traffic usage and this will be exacerbated as a result of both approved and proposed development along the length of road connecting Clay cross to Chesterfield. This is exacerbated due to the role the A61 plays whenever there is congestion on the M1. Further additional traffic movements onto the road at the point proposed would unacceptably add to that pressure and have an adverse impact on the safe and free flow of traffic contrary to policy T2 of the North East Derbyshire Local Plan.*
- *Clay Cross has historically been subject to heavy industry, including the working of coal. The Council has set out policies which seek to move away from the dereliction of the past and move towards a clean working environment. The creation of an open cast coaling site in close proximity to the developing town will have a negative impact on the Council’s proposals for its regeneration. It is considered this is contrary to the policies of the NPPF which seeks to promote sustainable, economic, social and environmental development”.*

Notwithstanding comments made by officers in Environmental Health, members of NEDDC retain concerns about the impact of the proposal will have on the amenity of nearby residential property owners and users of other nearby community facilities, such as Tupton Hall School and the nearby primary schools, especially due to the projected working times. NEDDC requests that careful consideration is given to these issues and weigh them in the planning balance.

NEDDC - Environmental Health Officer (EHO)

The comments of the EHO are summarised below.

Noise

At the scoping stage, the EHO provided comments to the applicant on the likely impacts of the proposed scheme, setting out requirements for the assessment of potential noise impacts. The EHO notes that a noise assessment has been undertaken to assess the potential impacts of the development upon identified noise receptors and that the applicant has considered the merits of increasing bund heights. The applicant has balanced

the benefits that this would give in terms of noise reduction against the loss of available coal; the assessment is therefore something of a balance.

The EHO commented that when the predicted noise level is above 55 dB(A), the duration is for less than 8 weeks in any calendar year. The applicant considers that soil and overburden operations can be classed as Temporary Operations, for which a higher noise limit of 70 dB(A) may be considered. The use of the higher noise limit is proposed by the applicant for affected dwellings and they have offered two conditions to bring this into effect. Whilst the use of the higher noise limit is generally in accordance with relevant guidance, this level of noise would likely cause some disturbance to local residents for the duration for which the noisy works last.

The calculated noise levels for routine operations are generally at or below the upper site noise limit of 55 dB LAeq, 1 hour, free field at dwellings. For most dwellings in the vicinity of the site, two significant noise producing activities within the site will take place in the nearest areas for less than 8 weeks in any calendar year.

A Noise Mitigation Plan has been submitted with the application and the EHO has requested that this be conditioned if the application is approved.

Air Quality

The EHO noted that an Air Quality Assessment (AQA) had been undertaken and considered the Air Quality Objectives (AQO), in relation to guidance included in the UK National Air Quality Strategy 2007. The assessment of the baseline identified that the site is not in an Air Quality Management Area (AQMA) and that dust deposition rates are generally low. The EHO commented that the monitoring undertaken by the applicant established that certain natural conditions caused periods of higher dust deposition rates and that the real time particulate monitoring suggested that the average baseline data for particulate matter 10 micrometres or less in diameter (PM₁₀) and nitrogen dioxide (NO₂) fell below the respective 24 hour local AQO criteria. Peaks in PM₁₀ above the AQO occurred adjacent to the A61.

Traffic Exhaust Emissions

The EHO commented that the AQA considers that baseline concentrations of air pollutants are below the AQO and traffic movements are not anticipated to significantly increase congestion or decrease average speed on the A61.

Health Impacts

The EHO advised that in the case of surface coal mining schemes, the potential for adverse health effects can be minimised through ensuring that modern working practices and good 'housekeeping' techniques are adopted. The application suggests that the scheme will generate relatively minimal additional traffic volumes in the context of the current traffic levels on the A61. As the baseline concentrations of air pollutants are below the AQO levels for

the area, the applicant considers that the increased traffic levels generated by the proposed scheme will have a negligible impact on Air Quality.

Cumulative Effects – Air Quality

The EHO commented that, as a worst case, the combined increase in HGVs from the proposed Energy from Waste facility (EfW) on Bridge Street, Clay Cross and Hilltop schemes would result in an additional 100 movements per day along a short stretch of the A61 between the Hilltop site entrance and the A6175. The St Modwen development is located on the opposite side of the A61 to the Hilltop scheme and has been considered in cumulative terms. The AQA states: *“The worstcase scenario would be if groundwork’s for the western extent of the St Modwen scheme (whether residential or commercial) occurred concurrently with Cut 8 of the Hilltop scheme as the dust generating activities would be approximately 35 m apart potentially resulting in significant cumulative effects in the absence of mitigation.”* The AQA states: *“A further consideration would be occupation of the St Modwen development by the time Cut 8 is being worked thus introducing new receptors in close proximity which have the potential to be affected by dust impacts from the Hilltop scheme. The proximity would be comparable with the closest existing receptors to the west of the site and these receptors would be downwind of the prevailing wind direction and additional mitigation may be required due to the proximity of potential receptors particularly during adverse wind conditions.”*

Air Quality Conclusions

The risk of health impacts (associated with PM₁₀ and particulate matter 2.5 micrometres or less in diameter (PM_{2.5})) in the absence of mitigation measures is assessed as being ‘low’ and the applicant considers that good practice measures will be sufficient to control emissions of fine particulates. It is suggested that mitigation will be necessary to address cumulative effects when the scheme is considered, together with the proposed EfW facility and St Modwen’s development, such that mitigation is employed at all sites as required under planning conditions/legal obligations. Mitigation measures have been proposed and monitoring is proposed to control emissions and the residual effects of the scheme.

Dust Mitigation

The EHO previously requested a dust mitigation plan to be submitted and agreed by the MPA prior to the commencement of development. The applicant has submitted a Dust Mitigation Plan with the application.

Lighting

The EHO noted that it is proposed to light the processing compound during the winter months but no details of any light impact assessment have been carried out or submitted with the application. The EHO would expect the impact of lighting to be taken into account as part of this development and has recommended a condition that will allow for the impact to be assessed if the application is approved.

General

The EHO concluded that, there is the potential for minor temporary simultaneous negative effects with other development in the vicinity of the application site, and noted the applicant's suggestion that such effects are not likely to be significant and the applicant considers that such impacts are unlikely to render the proposal unacceptable.

The EHO's concluding comments

The applicant has considered the environmental impacts associated with the proposed development and, as a result of the potential adverse impacts, has offered mitigation measures and mitigation.

As lighting has not been considered in detail within this application, the EHO has recommended a condition to allow for the impact of the scheme of lighting to be agreed if the application is approved.

The EHO recommended conditions to control the impacts of noise and lighting, and commented that the EHO's findings are presented on the basis that the conditions proposed are included on any planning permission if granted and the site is subject to a restriction on the working hours as specified in the application supporting documents.

Leader of NEDDC

The Leader identifies that the revitalisation of Clay Cross has been a key priority for NEDDC, reflected by the adoption of the Clay Cross Regeneration Framework (2009, revised in 2013). This vision for the town has resulted in strong progress being made, but much more needs to be done in what is a very demanding and fragile local economy.

The leader considers the following issues:

“Why are we trying to regenerate Clay Cross?”

Clay Cross is one of the most deprived areas in North East Derbyshire. The latest social and economic indicators demonstrate:

- *the unemployment rate for Clay Cross 1.75%, England was 1.4%*
- *the young person unemployment rate for Clay Cross was 2.45%, while the rate for England was 1.4%*
- *the number of residents of working age who do not have a qualification (Clay Cross 25.4%, England and Wales 15%)*
- *residents employed in 'Elementary Occupations' (Clay Cross 14.0%, England and Wales 11.2%)*
- *economically inactive residents (Clay Cross Inactive 26.6%, England and Wales 23.2%)*
- *in addition, Clay Cross is made up of 5 Lower Super Output Areas (LSOAs)*

What has the Council done to support the Regeneration of Clay Cross?

A range of strategic plans and policies have been formally adopted by the Council to help support the Regeneration of Clay Cross.

- *Adopted a NEDDC Growth Strategy (2014)*
- *Adopted a Housing & Economic Development Strategy (2015-2020)*
- *Developed a Regeneration Framework for Clay Cross*

In all these key documents Biwater, which is directly opposite the proposed opencast, is identified as a key site and also as a 'transformational intervention project' - delivering the two key objectives of:

- *Enabling Housing Growth : increasing the supply, quality and range of housing to meet the needs of a growing population and support economic growth*
- *Unlocking Development Potential : unlocking the capacity of major employment sites*

These list Biwater as a key opportunity for addressing a range of social and economic challenges facing the district. The Biwater development will also be a contributor to the County Council's A61 Strategic Growth Corridor Strategy, and to the growth objectives of both LEPs.

Going forward at Clay Cross

The ongoing regeneration of Clay Cross is at a critical point, following the successful delivery of two major development schemes (New Bridge Street and the Extra Care scheme on the former school site). The impact on Clay Cross generated by the investment to date has been significant, not least in terms of a greatly improved external perception. However, the social and economic indicators tell us that much more investment is needed to address the deprivation which Clay Cross continues to experience.

The Biwater site has outline approval for 980 houses, 29,500sqm of B1/B2/B8 employment space, a local centre, and a new pub and hotel. Construction of a new Marstons pub and access roundabout is already underway, with the pub due to open August 2016. This level of development directly adjacent to Clay Cross presents a significant opportunity to address the social issues set out above, and to move forward the regeneration of the town.

Why do we object most strongly to these proposals?

The opencast proposal would have a severe and detrimental impact on the continuing regeneration of Clay Cross, particularly on the future development plans for the former Biwater site.

St Modwen Developments Ltd (the developer) who are developing the Biwater site have articulated clearly to us the negative impact on demand for the

residential and commercial products being delivered by their development should the proposals be given the go ahead. It should be noted that the previous owner of the Biwater site failed in securing a development partner for the site and subsequently went into administration, an indication of the marginal nature and weakness of the local development market. The comprehensive redevelopment of the Biwater site is essential to maintain the regeneration momentum as this key site will bring new homes, jobs, training opportunities and the associated prosperity on a major new development. In terms of wider impact on development across the town, a recent independent options appraisal for a residential site in Clay Cross (Tibbalds, 2014) noted that whilst housing values have improved 'considerably' since 2013 on a national scale, values in the Clay Cross area have increased marginally, and that the town is mostly low value. This marginal viability of the Clay Cross housing market makes the area even more sensitive to development proposals, such as the one proposed for Hilltop, that may impact on the attractiveness of sites to housebuilders, developers, and potential occupiers."

Finally, he states that the redevelopment of the Biwater site is a strategically important development, and features prominently in a range of local and sub-regional economic development policy documents and plans. The Leader considers that the approval of the Hilltop application for opencasting in this area is very likely to derail the hard won regeneration achievements to date and undermine current proposals and plans in Clay Cross currently being negotiated. As such, he urges the Council to recommend refusal.

Clay Cross Parish Council

Clay Cross Parish Council (CCPC) requested that the application be rejected and raised concerns relating to air quality and contamination, noise, flood risk, and other environmental issues. The main points raised are summarised below:

Air Quality and Contamination

The report submitted by Provectus is extremely out of date and does not take into consideration other developments that are taking place, including the adjacent St. Modwen site.

The vulnerability of residents to dust contamination

The percentage of older people in the area is high and there is a high record of chest and breathing problems. The area has previously been a mining area with many older men having worked in the industries with higher than normal cases of Bronchitis, Asthma and Pneumoconiosis.

The cumulative impact upon local communities with noise, dust, particulates, fumes, contamination and probable pollution is totally unacceptable.

It would seem ludicrous to again inflict on the people of Clay Cross a scheme that adds nothing to the ongoing redevelopment work that is taking place within the area.

Noise

The noise report highlights that levels will be higher than the norm and fails to consider the other redevelopment works that will be taking place adjacent to the site.

Flood Risk

The planning application fails to understand and deal with the complexities of the development, and lacks proper investigation and ability to comprehend what is suggested in respect of the removal and diversions of surface and pumped water from the 'cuts'.

Watercourse 2, which is the preferred avenue to channel all site water via settling ponds and eventually into Press Brook in Kenning Park, crosses CCPC, land at its most northerly point and has been the subject of recent flooding problems. CCPC is very concerned that the lack of concrete information and methods to deal with high water levels will impact upon Parish land, allotments and residents.

CCPC also raised concerns about the impact of the proposal on a proposal already granted for housing on land to the east of 71 and west of 69A Holmgate Road directly adjacent to Watercourse 2 and the management of the watercourse at this point, and has fears that the area north of Holmgate Road, Holmgate Road itself and the Kenning Park site opposite will be prone to the high risk of flooding.

CCPC is concerned about the addition of water from the proposed site and the potential for extra flow into the Press Brook, and the impact of potential pollution on the Meadow Farm Fishing Pond which receives water from the Press Brook under an Abstraction Licence.

Other Environmental Issues

The application site, Kenning Park and Meadow Farm Pond, which border the application site, have an abundance of wildlife due to the conservation and habitat improvements, one of which is the promotion of the owl population. CCPC is concerned that the proposal would decimate the hunting area and the Council's nest boxing scheme would be put in jeopardy.

Press Brook has improved greatly over the years to a point where Water Vole, Kingfishers and Trout are sited regularly. CCPC believes this could be put at serious risk if the application is approved.

CCPC considers the application should be rejected as it offers nothing that benefits Clay Cross, apart from the possibility of 15 jobs for 3 years, and are

concerned, due to dust, noise and pollution, existing and potential employers will look seriously about relocating and move to better sites in other areas and jobs will be lost.

CCPC is concerned about traffic congestion and disruption on the A61 and A6175 through Clay Cross, and the impact of traffic from the site on the new developments proposed at the adjacent St. Modwen site.

CCPC commented on the regeneration benefits of the St. Modwen development for retail business, employment and new homes on a brown field site and considers that if this planning application was to be granted, the result would be a major impediment to the regeneration of Clay Cross.

CCPC also made a number of comments in relation to the Draft Heads of Terms submitted with the application in which the applicant has put forward a number of proposed community benefits.

CCPC considers that if this application is granted, it would put the regeneration of Clay Cross back years and mean that the hard work put in by many people to regenerate the town would stall. This is not a move forward and the social and economic cases have not been proved.

Following the submission of further information, CCPC considers that the further information provides little or no new evidence to enhance or support the case for opencasting at the Hilltop site and maintains its objection to the scheme:

- Reinforced its concerns about flooding via Watercourse 2 and concerns about the impact that this may have on the redevelopment and revitalisation of Kenning Park.
- Raised further concerns about the Flood Risk Assessment (FRA) that has been submitted which, in its view, overlooks the watercourse in the middle of the site, concerns about the proposed lagoons, noise from the 24 hour pumping operations and the impact of the proposal on the regeneration of Clay Cross.
- Appeals to the County Council to refuse the application.

Tupton Parish Council

The Parish Council reiterated its objection to the proposal on the following grounds:

- *“The development will have significant impact on residential properties, primary and secondary schools and local businesses due to the proximity of the site;*

- *Noise and dust generated as part of the operation of the site will be detrimental to the health of the local community and a significant public health nuisance;*
- *Increased traffic through the Parish on what are local urban roads not constructed to accommodate the size and quantity of vehicles associated with the development;*
- *The development will have an adverse effect on regeneration of the area and the ability to attract businesses / sell residential properties;*
- *The site is used extensively as a recreational area which would be lost if the application was to be approved, it would also result in the destruction of the natural environment and loss of its wildlife;*
- *If successful this application would set a precedent for similar surface mining operations to be approved in the district and reduce the facilities available for local residents.”*

Wingerworth Parish Council

Wingerworth Parish Council has not made any comments on the current application, however, in response to the consultation on the previous application, the Parish Council expressed concerns about the activities associated with this development could have an adverse effect on the Parish as a result of dust pollution and with increased traffic flows. The Parish Council was also concerned about the possibility of endangering the health of many young people from the Parish who attend the Tupton Hall School which would be very close to the proposed opencasting. In the event that the application was granted, the Parish Council seeks assurances that all health risks would be properly addressed and managed, and that the resulting traffic be managed in such a way as to minimise the impact on a very busy A61.

Environment Agency

The Environment Agency advised that a mining wastes and discharge permit from the Environment Agency would be required for this development and that dewatering activities may require an Abstraction Licence.

Coal Authority

The Coal Authority encourages and supports this planning application, which is seeking to work coal in environmentally and socially acceptable ways to meet the current market requirements. The Coal Authority considers that the proposal would contribute to the Government's policy framework for a diverse and secure energy supply, and incorporates the principles of sustainable development. The National Planning Policy Framework (NPPF) sets the most challenging standards for surface coal mining in England and the Coal Authority believes that the coal industry can successfully operate within these principles provided they are applied equitably by all MPAs. The Coal Authority considers it essential that the planning process takes account of the fundamental principle of minerals planning - that minerals can only be worked where they occur.

Specific comments

The Coal Authority records indicate that there are 8 mine entries within, or within 20m of, the site boundary. The site is also in an area of both recorded and likely historic unrecorded underground coal mine workings at shallow depth. Part of the site has, in the past, been subject to surface coal mining activities.

The planning application is supported by a Geological and Hydrogeological Assessment Report; the Coal Authority is pleased to note that this considers coal mining legacy and how this may impact on the proposed workings. Such awareness of coal mining legacy issues should ensure that the proposed mining operations can be carried out safely.

In this proposal, the removal of shallow old mine workings, shafts and adits with subsequent restoration may also provide a stable platform for future surface developments.

Rather than divert investment away from an area, surface mining of coal has often created inward investment, particularly in relation to improvements in transport infrastructure. Other local benefits include reduced hazard potential from mine gases and spontaneous combustion, improved water quality from treating minewater discharges and the recovery of minerals other than coal which helps to support the fireclay, building and brick clay industries.

The Coal Authority would process any subsequent application for an operating licence under Part II of the Coal Industry Act 1994 in accordance with its statutory duties and expects that the applicant would seek to obtain such a licence in due course.

Derbyshire Wildlife Trust (DWT)

DWT, in its original response to the proposal, highlighted issues in respect of the significance of the hedgerows H9, H10 and H17 which are proposed for removal and the provision of suitable opportunities to maintain the ground nesting bird interest during the operations. DWT commented that the re-submitted application is accompanied by an Ecological Addendum to support the previously submitted comprehensive Ecological Impact Assessment and includes further information in relation to hedgerows, trees, mitigation for ground-nesting birds, attenuation ponds and associated wet grassland. The addendum provides clarification on the extent of hedgerow removal and retention which is welcomed and the significance of hedgerows H9, H10 and H17 has been acknowledged with a proposal for their translocation.

DWT, in its most recent response, advised that its comments in respect of the translocation of hedgerows H9, H10 and H17, as set out in its response of 28 July 2015, still apply. The DWT comments were:

“the restoration plan for the translocation of hedgerows H9, H10 and H17 which whilst it falls short of retention as existing landscape features will hopefully retain some of the biodiversity value of the hedgerows. We would further suggest that once established the hedgerow bottoms should be sown with a hedgerow grass and herb wild flower mix to increase diversity of the ‘hedge’ habitat as a whole”.

DWT advised that the proposed hedgerow translocation programme detailed in the addendum is considered to be acceptable and addresses the issue raised in its earlier response.

Clarification on the proposed temporary mitigation measures for the ground-nesting priority species skylark and grey partridge, that were identified as using the site, have been provided and DWT is satisfied that the habitats provided in the proposed restoration scheme should provide the long term retention of suitable nesting habitats for these species. DWT advised that the temporary mitigation measures for impacts on ground-nesting priority species detailed in the addendum are acceptable.

DWT welcomes the proposed wetland enhancements to include wetland scrapes seeded with a wet grassland seed-mix and emergent vegetation, and advise that the development is carried out in strict accordance with the Landscape Restoration Plan drawing number 5171-L-01E as a condition of any permission.

Whilst DWT supports the broad objectives of the Outline Biodiversity Management, it notes that the Plan states that further details, including a work schedule and monitoring regime will be provided at the detailed application stage, which is supported. DWT therefore advise that the submission and approval of a detailed Landscape and Ecological Management Plan (LEMP) prior to the commencement of the works should be secured by a condition attached to any permission.

The two invasive species, Japanese Knotweed and Himalayan Balsam, were recorded on the site and DWT recommends that a condition to secure the control and removal of the species should be attached to any consent.

Natural England

Natural England does not consider that this application poses any likely or significant risk to those features of the natural environment for which it would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this application.

Natural England advised that the lack of case specific comment from Natural England should not be interpreted as a statement that there are no impacts on the natural environment. Other bodies and individuals may make comments

that will help the Planning Authority to fully take account of the environmental value of this site in the decision making process.

Natural England expect the MPA to assess and consider the possible impacts resulting from this proposal on protected species, LWSs, biodiversity and landscape enhancements. Natural England referred the Authority to its standing advice and relevant Government guidance. Natural England assessed the proposal as low risk.

In its responses to the re-submitted application, Natural England also referred the MPA to its previous comments on the original application which it considers to still apply for the overall site. Natural England's previous comments did make specific reference to the proximity of Fall Hill Quarry SSSI and Ogston Reservoir SSSI, and is satisfied that the proposed development would not harm these sites. Natural England also made specific comments in relation to soils, land quality and reclamation of the site, and recommended a suite of conditions to safeguard soil resources and for the aftercare of the site.

Historic England

Historic England recommended that the application should be determined in accordance with national and local policy guidance, with reference to the Council's specialist conservation and archaeological advisors.

Network Rail

Network Rail has raised concern about the safe operation of railway infrastructure that may be jeopardised by the proposed works. Network Rail notes that the extraction depth would be up to 40m with the lowest point of the excavation reaching approximately 102m AOD in cuts 7 and 9. The level of the track bed within the Clay Cross rail tunnel is at approximately 122m AOD, therefore the level of the workings would be 20m below the level of the tunnel. Substantial areas of surface, shallow mine workings and a number of mineshafts are recorded beneath the proposed site and adjacent extend below Network Rail property to the east. Although the Clay Cross Rail Tunnel is approximately 400m from the site, Network Rail has raised concerns about the shallow underground workings beneath the site extend to the east and are connected to shallow workings and recorded shafts in the vicinity of the tunnel.

Network Rail considers it likely that these workings will contain water and that the working of the coal at this site may cause its redistribution. Although the general dip of the seams is to the east, the working of the deeper seams at the site would be vulnerable to movement of water from workings in the shallower seams. Any significant movement of water from workings around the tunnel could cause resettlement of the workings. Therefore, within the design for the site, specification for a study to establish the baseline groundwater conditions and assess the potential impact on the railway should be included.

Network Rail considers it crucial to control water on this site by ensuring that the attenuation tank, settling ponds, drainage ditches, temporary sumps and cut-off ditches are constructed and fully operational prior to the commencement of any substantial soil stripping.

Network Rail has considered the applicant's proposals to deal with surface water and ground water emergence and is concerned that the condition and behaviour of the downstream drainage system is not fully understood. It is vulnerable to surcharge; the railway suffers regular inundation as a result. Network Rail requests that the applicant make every effort to attenuate flows of water from the operations so as to ensure that flood risk to the railway is not increased.

Network Rail considers it to be vitally important that no water is discharged into the unnamed water course running between the northern most fields. This water course flows under the A61 towards the railway north of the tunnel and then via a culvert parallel to the railway. This water course is already overwhelmed regularly and any addition of water to this would put the railway under significantly increased jeopardy of disruptive flooding. The condition and behaviour of the downstream drainage system is not fully understood; Network Rail is investigating the area and work to mitigate risk is ongoing. The outfall of the unnamed watercourse is monitored remotely by Network Rail to help understand how often the outfall surcharges.

Network Rail has confirmed that it would require further information to confirm or rule out any potential physical movement on the Clay Cross Tunnel lining, which may be triggered as a result of the proposed operations; particularly by dewatering known old mine workings around the tunnel. Should the tunnel lining be predicted to move more than 1mm, further analysis may be required (and would be required to be independently verified). If further information cannot adequately demonstrate that dewatering operations would in no way impact the tunnel then the applicant must agree a Safe System of Work (SSOW) with Network Rail to safeguard the tunnel. However, it is satisfied that this could be progressed as a pre-commencement condition should planning permission be granted.

In addition to the above, Network Rail has also recommended further conditions be attached to any grant of planning permission, and that operational and safety informatives be passed to the applicant/operator for information purposes, to protect railway infrastructure.

Severn Trent Water Ltd (STW)

STW has no objection to the proposal subject the imposition of condition to require the submission of drainage plans for the disposal of surface water and foul sewage. STW advised that there is a public sewer located within the application site and that consent from STW would be required for the proposed works close to, directly over or to divert the sewer.

Yorkshire Water

As currently shown, the proposal is not acceptable to Yorkshire Water as the submitted drawings appear to show a public sewer within cuts 1, 2 and 3, and it considers it to be essential that the presence of this infrastructure is taken into account in the design of the scheme. Yorkshire Water advice is that a 5m stand-off is required each side of the sewer and it should be demonstrated that any excavation adjacent to the stand-off would not be detrimental to the stability of the bank within which the sewer resides. Alternatively, a proposal to alter/divert the public sewer would be subject to Yorkshire Water requirements and formal procedure in accordance with Section 185 of the Water Industry Act 1991.

National Grid

Raised no objections to the proposal and has provided its standard response and Advice Note to the applicant.

Public Health England (PHE)

PHE has requested that its consultation response to be read in conjunction with its previous consultation response, dated 18 June 2015.

PHE notes the proximity of the site to residential properties and the potential for fugitive emissions to air of dust and noise associated with the proposed development and commented that exposure to airborne particulate matter leads to adverse health effects. The Department for Environment, Food and Rural Affairs (DEFRA) data and local background monitoring indicates variable levels of ambient particulate matter and dust that are generally within air quality standards and dust deposition guidelines. The applicant's assessment of air quality concludes that its proposed monitoring and mitigation plan will ensure that the potential for dust nuisance and health impacts is not significant and that air quality standards will not be exceeded off-site.

In relation to noise, PHE commented that the applicant's assessment of proposed lower and upper site noise limits was based on relevant planning guidance. The applicant predicted the effect of increasing bund height at one example site (8 Peters Avenue), showing that higher barrier heights would not reduce levels to compliance with the suggested lower site noise limit at dwellings. The applicant's assessments indicate that there will be noisy periods, especially when operations are close to nearby residential areas, as phased extraction moves from north to south. Noise can have adverse impacts on people's health and wellbeing. PHE recommends that the operator should employ best practicable means in its noise mitigation plan and advised that the local Environmental Health Department would be able to comment and advise on the acceptability of such a plan.

PHE further commented that effective monitoring and mitigation would be required throughout the three year duration of the development to minimise

potential off-site dust and noise, and support the earlier point made by NEDDC's EHO that it would be beneficial if the operator ensured that there was a channel for regular communication with residents throughout the project. Good practice would include the provision of information about current and planned site activities; progress updates; publication of monitoring results; advance notice of potentially problematic activities and/or weather conditions; and actions that are being or will be taken by the operator to prevent impacts.

Summary of PHE comments from 18 June 2015

PHE provided comments in relation to the monitoring carried out by the applicant and noted that the proximity of Derby Road had a significant impact on ambient levels of PM₁₀ and that PM₁₀ levels during the monitoring periods were significantly higher than either the annual means estimated by DEFRA or those recorded by roadside monitoring stations in the area. It was not considered clear what levels were being proposed by the applicant as indicative baseline concentrations and account had not been taken for any seasonal variation in levels that the onsite monitoring indicates is likely. The proposed "Frisbee" background monitoring also does not identify representative values to account for seasonal variation.

PHE considers the applicant's assessment of the likely impacts on public health and comment that although the applicant's study considers that emissions from the site are unlikely to raise levels of PM₁₀ to those that exceed the air quality standard, it is important to note that for particulate matter, there is no threshold below which public health impacts will not occur. The severity of the effect is related to the concentration and duration of exposure and, when examining population impacts, the number of people exposed.

Short term episodes (measured in hours or days) of poor air quality have the potential to disproportionately impact individuals with existing respiratory health conditions.

PHE concludes that the baseline monitoring carried out by the applicant shows that particulate levels in the area vary considerably according to antecedent weather conditions. It may be difficult to attribute increases in particulate levels recorded by the equipment during the proposed monitoring programme to site operations or otherwise given the limited data.

It is likely that the opencasting would cause some increase in PM₁₀ and PM_{2.5} material around the site although measures are proposed to mitigate these where possible. Vulnerable sub-groups of the population, such as the elderly or those with existing respiratory conditions, are considered more 'at-risk' from high levels of air pollution. Exposure to PM₁₀ and PM_{2.5} has been shown to have public health impacts.

PHE considers that the impact from opencasting at this specific site is difficult to quantify without more accurate data relating to population exposure duration and levels of PM₁₀ and PM_{2.5}. Additionally, the baseline data, as previously noted, would make the attribution or otherwise, of any increased levels of particulate in the area, difficult.

Officer comment: The applicant provided further clarification and a response to PHE comments of 18 June 2015 in the replacement application.

National Planning Casework Unit

Made no comments on the application.

The Highway Authority

Derbyshire County Council, in its statutory role as the Highway Authority, is of the view that the proposals would not lead to a severe highway impact and would not raise any highway concerns subject to the imposition of conditions to protect highway safety and amenity. The Highway Authority has also requested that the routing of HGV's to and from the development site and a restriction on traffic levels to that stated in the application should be secured through a legal agreement. The Highway Authority also provided advisory information for the applicant in relation to any proposed temporary division/closure of the PROW within the site.

Lead Local Flood Authority (LLFA)

In its original response to this application Derbyshire County Council in its statutory role as the LLFA, advised that it was currently investigating an ongoing flooding issue in the northern part of the application site, the source of which was unknown and the applicant should demonstrate that the development does not increase or exacerbate the ongoing issue. From anecdotal information received during investigative works, it is believed that a sough may flow from the northernmost boundary outfalling into Watercourse 1. Due to the historic mining and mineral extraction operations in Derbyshire, networks of old stone soughs (drainage channels, sometimes known as adits) may exist beneath the ground surface in parts of the County. The applicant was advised to thoroughly investigate the potential for hidden watercourses prior to any works being undertaken.

Additionally, the LLFA has received anecdotal evidence that suggests there is a potential watercourse located in the centre of the site. The LLFA advised that the significance of this watercourse should be investigated to assess the potential impact this may have on the development. The unnamed watercourse is identified to be located in the coal processing area, evidence should be provided specifying how the environmental integrity of the watercourse, if observed, would be preserved.

The LLFA provided comments on the proposed attenuation lagoons and advice on the information that would be required at detailed design stage in

order to appropriately size the lagoons. The LLFA noted that properties to the west of the site are at risk of flooding, the County Council has historic records of flooding to some the properties located north of Watercourse 2. The applicant should ensure that there is no increase in flood risk to these properties as a result of both catchments outfalling into Watercourse 2. The LLFA requires evidence to be submitted in the detailed design to demonstrate that the discharge of water to Watercourse 2 from the catchments of all watercourses located within the developable zone does not exceed the existing rate of the catchment discharging to Watercourse 2 (from the catchment of Watercourse 2).

The site's ground levels may be up to 2m higher than the existing following restoration and the LLFA advise consideration of how altering of ground levels and contours may affect the existing surface water flow routes. The detailed drainage scheme should ensure that altering of ground levels does not increase flood risk. The same considerations should be made when designing for noise attenuation bunds.

Data held by the LLFA suggests that there may be a series of minor watercourses (possible ditches) in the south of the site. The significance of these watercourses should be investigated and all drainage infrastructure should be reinstated post development.

The LLFA made recommendations for planning conditions for the submission of further information and detailed designs. The LLFA recommended the submission of a full and up to date FRA that takes account of the new anecdotal evidence.

Following the submission by the applicant of an updated FRA, the LLFA made the following comments:

The LLFA does not consider that the submitted FRA contains sufficient information to assess the flood risk from a potential watercourse in the central area of the site, a sough in the northern two fields and a series of minor watercourses in the southern area of the site. Whilst the FRA includes an overview of the potential for a watercourse in the centre of the site it fails to confirm its presence. The FRA states the potential watercourse is the remains of a land drainage ditch, and confirms that during a site walkover a ditch was observed. However, under the Land Drainage Act 1991 an Ordinary Watercourse include all streams, ditches, dykes, culverts, sluices etc through which water flows providing it has connectivity to the wider river network. The FRA does not confirm if the ditch and culvert connect into the river network, if the culvert outfalls into a watercourse it has the classification of an ordinary watercourse.

The FRA states a Ground Penetrating Radar investigation has been undertaken which is presented in the archaeology report (appendix 8) within

the ES, however, this investigation has not taken place; appendix 8 shows the results of a magnetic survey. The LLFA understands that the main limitations of magnetic surveys to be that some subtle features may be obscured by highly magnetic or modern materials. With the magnetic survey picking up on the water mains flowing through the site the LLFA questions whether these features may have the potential to obscure any potential existence of a sough.

The LLFA noted that during a site walkover the ditches/watercourses identified on mapping were not observed on site as obvious fluvial features. Currently, this network of watercourses is identified on the Detailed River Network and therefore their existence should be properly considered especially during the restoration phase to ensure that there is no interruption in the conveyance of any flows.

In addition to the above, the LLFA notes a number of errors and contradictions within the FRA and therefore does not have confidence that the FRA sufficiently assesses the risk of flooding the development may pose to the site. The LLFA requested further information in order to overcome its objection.

Officer comments: In relation to the above concerns, the MPA formally requested further information from the applicant under Regulation 22 of the EIA Regulations. The applicant has advised that it does not intend to provide the information under Regulation 22, as it does not consider the information requested to be environmental information and invited the MPA to withdraw the Regulation 22 request. Following receipt of this request, the MPA reconsulted with the LLFA who provided a further clarifying response about the information that was considered necessary in order to overcome its objections. The MPA has reviewed and clarified with the applicant what information is still required and advised that some of this information is still required under Regulation 22 of the EIA Regulations.

In summary, the information requested is as follows:

- Watercourse in the central area of the site (referred to as Watercourse 3) - Further information is therefore required to ascertain the presence of Watercourse 3 in the central area of site and whether it has connectively to the wider river network. Details of how any potential flood risk would be mitigated within the designed water management system on the site should also be provided.
- Potential sough in the northern two fields - Further information is required about the potential flood risk from this source and details of how it would be managed and/or mitigated should it be identified.

Whilst no information has formally been received by the MPA, the applicant has provided the information in draft form to the LLFA. The LLFA has indicated that the information provided in draft provides the necessary

information but suggested that when it is formally submitted that the catchment of Watercourse 3 could be highlighted on a topographical survey.

Health and Safety Executive (HSE) and Western Power

Have been consulted on the application and, to date, no comments have been received.

Publicity

The application has been advertised by press notice (Derbyshire Times), by site notice and by neighbour notifications with a request for observations by 4 March 2016, and was again advertised by press notice (Derbyshire Times) and by site notices following the submission of further information with a request for observations by 11 August 2016. The draft information supplied by the applicant to the LLFA has also been advertised by press notice (Derbyshire Times), by site notice with a request for observations by 16 March 2017. Thirty two individual letters of representation, from 30 households objecting to the proposal, and 1 letter expressing views neither for nor against the proposal have been received as a result of this publicity.

In response to the publicity undertaken for the previous application for this proposal, 209 letters of representation's, from 183 households and a petition with approximately 1,615 signatures were received, all objecting to the proposal.

There have been several submissions in relation to the proposal from a local campaign group 'Hilltop Action Group' (HAG). Representations have also been received from agents acting on behalf of a landowner (Indimmo) and from St Modwen who are owners of and are developing the adjacent Biwaters site.

The main concerns and objections raised in the representations to the proposal are summarised below:

Location

- Site is too close to residential properties and would be intrusive and cause major disruption for residents.
- In Scotland and Wales, opencasting cannot take place within 500m of dwellings.
- Quiet and peaceful area.

Landscape and Visual Impacts

- Blot on the landscape.
- Site would be an 'eyesore' for three years or more.
- A large parcel of agricultural land on the opposite side of the A61 to be used for building and are thus wrecking the rurality.

Noise

- Noise from the pumps running 24 hours per day.
- Noise from operations 7am to 7pm.
- Noise from excavators, vehicles loading and unloading and from reversing beepers.
- Disturbance to residents who work nights and sleep during the day.
- Noise bunds are not sufficient to prevent noise levels rising.
- Concerns about the accuracy of noise assessment that has been carried out and the impact of noise will be greater than predicted.

Traffic

- More HGV's would result in more accidents.
- Traffic congestion is already a problem in the area, the addition of 20 HGV's per day is going to be a major problem.
- Traffic with impact on the businesses in Clay cross.
- Increase in traffic would damage the viability of the adjacent housing projects.
- Mud on the road.
- Traffic congestion on M1 between junctions 28 and 29 use alternative route along A61 between Alfreton and Chesterfield.
- Damage to the highway.
- Concerns for children's road safety.
- Route past site is essential for access to nearby shop and used by school children on the way to school. Pavements are not very wide.

Light Pollution

- Concerns about light pollution from the development.

Air Pollution

- Pollution from diesel fumes.
- Dust generated from the site.
- Vegetables growing in garden and clothes drying would be covered in dust.
- Dust on solar panels will lead to financial losses and increase cleaning costs.
- The prevailing south-westerly winds would carry dust and exhaust emissions over many more homes and schools.

Impacts on the Water Environment, Drainage and Contamination

- Concerns about flooding in gardens; flooding is already considered a problem on North Street.
- The northern part of the proposed development lies within a High Water Vulnerability Area.
- Blockage of existing watercourses on site which could lead to flooding.

- Concerns about flooding issues on Ashover Road which have been subject of complaint and investigation by the LLFA.
- Concerns about flooding in northern most field from a highway drain on Ashover Road, concerns about where this water goes, the presence of a stone sough that may be carrying water in the northern part of the site and what the impact of opencasting would have on these local flooding issues.
- The site gets water logged.
- Water lagoons have a high chance of over spilling and causing flooding.
- Risk of water pollution from a number of active underground water springs and water distribution to many areas, including the south area in close proximity to Kenning Park.
- The existence and importance of a cistern and culvert or the water course culvert at the south end of the site has not been recognised.
- The watercourse on site feeds into Kenning Park fishing pond and onto Ogston Reservoir which could cause contamination and damage pond life.
- The excavations would lower the water table, which would dry out clay and cause subsidence in neighbouring houses.

Wildlife and Ecology Impacts

- Loss of wildlife habitat and flora.
- The woods and fields have taken centuries to mature and its nonsense to say that they would be restored to their former glory.
- Impact of dust on wildlife.
- Impact on badgers, foxes, reptiles and birds using the site.
- Skylarks nest in the fields.
- Owls hunt in the fields, their food will be driven away.
- Impact on trees and hedgerows. Hedges will take many years to return to their current height and thickness.

Impact on Public Health

- Health impacts from disturbance, noise and dust.
- Impact on people with asthma living in the area.
- Two schools are located nearby, the health of the children attending these schools should be considered. Over 170 children at Tupton Hall School suffer from asthma, the proposed mining site would exacerbate their condition.
- Childrens lungs are particularly susceptible to air pollution.
- Impact on those with lung disease.
- Implications for future generations.
- Already health issues in the area as a result of past mining activities.
- Stress and anxiety from the disruption.

Vibration and Land Stability

- Vibration from the HGV traffic.
- Concern about ground movement with extraction so close to housing.

Economic

- No financial benefits to the local area.
- No employment in the project for local people.
- Financial strain on the local health budget.
- Cannot see how, after closing all the pits in Derbyshire, that the opening of another makes any economic sense.
- Impact on tourism.
- Loss of revenues from employers unwilling to invest in an opencast area.

Other Concerns

- Loss of value of properties.
- Loss of enjoyment of gardens.
- Development would produce minimal quantities of poor value coal.
- Carbon emissions and the use of fossil fuels.
- The sulphur content of UK coal is known to be far higher than that imported from abroad. Imported coal is therefore the best option until the complete phasing out of coal is complete.
- The proposal is not about reclaiming or restoring contaminated land but an exploitation of farmland for financial gain.
- The Hilltop site is not polluted and land is worked throughout the year by the local farmers. It does not need to be restored.
- The benefits of the proposal do not offset the disruption that would be caused.
- Would destroy everything that has been and still is being achieved in Clay Cross.
- No reasons to open new opencast sites.
- Amber Rudd MP has said coal is to be phased out.
- The UK has plentiful renewable energy and is exploiting several different sources. Cannot justify the use of the dirty fossil fuels.
- Difficult to believe that additional material would not be required to back fill the site.
- Loss for fields that are used for walking and concerns about the closure of footpaths.
- Safety concerns about pets and children accessing the site.
- Remediated sites do not look natural.
- Concerns about further applications to build on or landfill the site.
- A committee set up to look at community benefit fund allocation should be strongly representative of the communities most affected.
- Concerns that the timescale of 3.5 years is unrealistic.

- Why restore to agricultural land if the site is to be used for building housing to facilitate the delivery of the A61 growth corridor scheme and NEDDC'S housing option.
- Concerns about abandonment of the site. An insurance bond is necessary in case the company goes bankrupt so the site can be restored.
- No reference in the planning application to the cumulative effects of this operation and the proposed building of 58 houses on land north of the same section of Ashover Road.

HAG Representation

HAG has provided a substantial and lengthy 91 page representation on this application. Many of the issues raised by the HAG are included in the points listed above. Other significant points raised in its submission have been summarised below:

- The application fails to acknowledge the number of residential properties, schools, care homes, businesses and community facilities in close proximity to the site and does not consider the demographics of the local communities. HAG analysis of local area identifies that there are at least 2,228 properties within 1km of the Hilltop site that could be affected by the proposal.
- The community benefits proposed are unlikely to be deliverable and are of no interest or use to the majority of local residents.
- The application statement about the provision of a new footpath is misleading.
- Any relaxation of upper noise level constraints on a site surrounded by so many residential properties cannot be justified.
- Analysis by HAG identifies 544 residential properties and 2 residential care homes within 200m of the site. The adverse effects of noise would be experienced by all these properties, not just the few identified in the applicant's Noise Assessment Report.
- Vehicles on the northern haul road would be above the level of the noise bunds as they enter the coal processing area.
- 3m noise bunds are proposed, other similar schemes, with far fewer residential properties in close proximity, have required 5m or 6m bunds.
- The Noise Assessment Report makes no mention of the effects of weather on noise propagation.
- The Air Quality and Dust assessment has not considered how topography may affect the emission and dispersal of site dust.
- Concerns about the amount of dust in combination with other permitted developments.
- Aerial imagery of the large field to north of Ashover Light Railway clearly shows an anomaly which is not identified in either the Geological and

Hydrogeological Report or the Cultural Heritage Report and has therefore not been investigated.

- Concerns about contamination from previously backfilled areas from previous coal mining activities.
- Concerns about slope stability.
- Concerns about discharge from the lagoons into Watercourse 2 and the watercourses suitability to take water from the site.
- Risk from drawdown of groundwater to foundation stability.
- No evidence of a comprehensive survey being carried out on the watercourse to the south-west of the site running into Press Brook.
- The watercourse in the central area of the site which runs through the proposed Coal Processing Area has still not been acknowledged in the new application.
- Cumulative impact of traffic from the site with other developments.
- No assessment of the impact on air quality and noise generated by the road traffic generated.
- Still no approved and agreed site access.
- Site Safety is not acknowledged.
- Concerns about the adequacy and accuracy of the ecological surveys that have been carried out.
- The visual impact of the development, views from properties, southbound traffic on the A61 seen as the gateway to Clay Cross and users of footpaths.
- The proposed scheme would impact the Clay Cross regeneration plans.
- The coal would only contribute about 0.146% of the UK's current annual needs, enough to meet the UK's energy needs for 12 $\frac{3}{4}$ hours each year. Insignificant amount of coal and, if not available, would not have any significant effect on the UK's energy security.
- Stockpiling of coal on the site whilst waiting for coal prices to increase.
- Concerns about the cumulative impacts of the development.

Representation on behalf of Indimmo

Indimmo are the owners of land where the access to the site is proposed off Derby Road. Indimmo are objecting to the proposal for the following reason:

- No agreement made with Indimmo for use of the land for access to Derby Road and is not considered possible due to the presence of a tenant on the land.
- The Indimmo site is occupied by two established businesses who hold leases for the buildings and yard area. No part of this land is available for use by a further party.
- The principal tenant DW Coaches has voiced concerns over a more intensive use of the site entrance by heavy lorries which it considers likely to cause congestion, on-site security risks and dust.
- The Transport Assessment (TA) in the replacement application has not been updated to reflect the revised access.

- The proposal does not comply with NPPF Paragraph 149.

Representation on behalf of St Modwen Development Ltd

St Modwen Development Ltd owns the adjacent strategic development site to the north, known as the Biwater site. It considers that the redevelopment of this strategic site will play a crucial role in regenerating Clay Cross and will provide new housing and jobs, recreation and leisure facilities. The Biwater Site benefits from outline planning permission for mixed use redevelopment including up to 980 dwellings, employment uses, a pub/hotel, a local centre, public open space and associated infrastructure and landscaping. In a collaborative approach with NEDDC and CCPC, St Modwen has a long term Planning Strategy for the delivery of this brownfield site. Reserved Matters Approvals were secured for means of access via a new roundabout on the A61 Derby Road to the west, and an access from Market Street to the east. Construction of this site infrastructure is underway. In addition, further planning permissions have recently been secured for a public house and for a food store and drive-through restaurant on the Derby Road frontage. St Modwen has raised objections to the proposal. The main points of objection are summarised below:

- Impact on the regeneration strategy for Clay Cross – St Modwen makes reference to the policies of NEDDC that seek to regenerate the town and enhance the environment. The redevelopment of the Biwater site is seen as a catalyst to that regeneration. The regeneration of Biwaters is a priority for NEDDC. Opencast coal mining directly opposite the Biwater site would have a negative impact on the town and the marketability of the site for development and delay progress on the development. Any ‘abnormal development’ would have a major impact on the area’s perception and promotion, and the ability to bring forward regeneration of the site.
- Timescales and completion - the timescale of 3.5 years in St Modwen’s opinion appears to be unrealistic and the company is concerned that the developer would need to apply to extend the life of extraction at the site and, to ensure that the site is restored, a bond should be secured through a legal agreement.
- Traffic and Highways - St Modwen raised concerns relating to the TA that has been undertaken for the proposal and about it not being updated to reflect the revised access arrangements. St Modwen is of the view that the traffic effects of the proposed opencast coal mining are not properly assessed in the TA as it is not based on the most recent traffic counts on which the designs for the new A61 roundabout, distributor road and junction with the A6175 are based; it does not consider the approved roundabout on the A61 or how the proposed access will work with this; the duration of the proposed extraction and restoration works appear to have been underestimated; and the traffic impact of the proposed opencast works has not been fully assessed

relative to the approved wider schemes and development on the Biwater site.

Officer comment: Further consideration of this matter is provided in the 'Planning Considerations' section later in this report.

- Noise – St Modwen raise concern about the absence of any baseline noise readings for the Biwater site and that the Council must be satisfied that a robust noise assessment has been undertaken to protect the environment of surrounding existing and future residential occupiers.
- Air Quality- St Modwen comments that the Council must be fully satisfied that there will be no risk to the health of existing residential occupiers, future occupiers of the Biwater site, as well as users of other community facilities such as the local schools, and that appropriate mitigation measures can be secured.
- Landscape and visual – St Modwen is of the view that the development of the site would have a detrimental impact on the character and appearance of the countryside in this location and that the operation phase could have potential visual impact (actual and perception) upon occupiers of the new development at the Biwater Site.
- The need for coal – St Modwen comments that there are no national targets for coal production and the Council should take account of alternative sites when making decisions.

Applicant Consultation

Pre-application consultation was undertaken by the applicant in the form of a two day public exhibition, as well as meetings with local community groups, CCPC, the creation and hosting of a project website, the circulation of regular newsletters and press releases. The applicant has provided in the application a Statement of Community Involvement.

Planning Considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In respect of this application, the relevant policies of the development plan are contained in the Derby and Derbyshire Mineral Local Plan (2002) (DDMLP) and the saved policies of the North East Derbyshire Local Plan (2006) (NEDLP). Other material considerations include current national policy and guidance in the National Planning Policy Framework (2012) (NPPF) and the National Planning Practice Guidance March 2014 (NPPG). Government policy and statements on energy provision are also relevant to this proposal.

I have provided below a summary of the current national policy and planning guidance which are relevant to this proposal.

National Energy Policy

There have been several important stages in the evolution of current national energy policy. The Department of Trade and Industry Paper, Meeting the Energy Challenge, 2007 states that England, Wales and Scotland's substantial remaining coal reserves have the potential not only to help meet our national demand for coal and to reduce our dependence on imported primary fuels, but also to contribute to the economic vitality and skills base of the regions where they are found. The draft National Policy Statement for Energy, published in 2009, builds on the 2007 Energy White Paper. Together they set out to address the long term energy challenges of security of supply, whilst acknowledging the implications of climate change. Whilst recent emphasis has been on the development of renewable energy supplies, the Government recognises the important and continuing role that indigenous sources of coal, oil and gas will play in meeting national energy requirements. It is seen as a flexible source of energy generation, an alternative to an over dependence on gas and as a back-up to intermittent renewable energy supplies.

The 2011 Energy White Paper 'Planning our Electric Commitment Future: a White Paper for Secure, Affordable and Low Carbon Electricity', sets out the Government's intention to transform the UK's electricity system to ensure that our future electricity supply is secure, low-carbon and affordable. The White Paper identifies a number of challenges that the Country will face over the coming decades:

- security of supply as existing plant closes;
- the decarbonisation of electricity generation;
- demand for electricity is likely to rise; and
- electricity prices are expected to rise.

The White Paper notes, that a dependence on traditional fossil fuels leaves the Country open to volatile prices, deepens our dependence on imported energy and leads to the emission of too much carbon; reforming the energy market is necessary to ensure future supply and build a cleaner, more diverse, more sustainable electricity mix.

The White Paper refers to new energy capacity as including renewables, Carbon Capture Storage (CCS) on gas and coal, and new nuclear stations. However, the White Paper acknowledges that coal fired plants, including unabated coal plants, will continue to have an important role to play in the coming years as the UK makes the transition to a low carbon economy.

Also in 2011, six energy National Policy Statements (NPSs) were approved. The Overarching National Policy Statement for Energy (EN-1), has an effect on the decisions of the National Infrastructure Directorate (NID) on applications for nationally important energy infrastructure projects, but is also

a material consideration in decision making for proposals that fall to be determined under the 1990 Act.

EN-1 re-affirms the Government's commitment to meet EU and prevailing national targets. EN1 recognises that the UK economy is reliant on fossil fuels, and that they are likely to play a significant role for some time to come. It adds that most UK power stations are fuelled by coal and gas, and that although a proportion of coal used in British generating stations is imported, the UK still has its own reserves, and the ability to source fuel from alternative suppliers helps to give stability to the UK's generating capacity. However, the UK needs to wean itself off such a high carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification and therefore reduce, over time, its dependence on fossil fuels, particularly unabated combustion.

In November 2015, the Secretary of State for Energy and Climate Change issued a Written Ministerial Statement (WMS) to Parliament, entitled Priorities for UK Energy and Climate Change Policy. The WMS does not change national planning policy or guidance but sets out Government's latest thinking on energy supply. In the WMS, the Secretary of State for Energy and Climate Change stated that one of the greatest and most cost effective contributions we can make to emission reductions in electricity is by replacing coal fired power stations with gas. The WMS states that the Government will be consulting on when to close coal fired power stations and will set out proposals to close coal by 2025 and restrict its use from 2023, but added that this would only proceed if there was confidence that the shift to gas could be achieved within these timescales.

The Secretary of State for Energy and Climate Change in a recent speech (18 November 2015) on a new direction for UK energy policy stated that 30% of the UK's electricity still comes from unabated coal and was recorded as saying that "*coal is the most intensive fossil fuel and damages air quality*", and that "*unabated coal is simply not sustainable in the longer term.*"

In summary, national energy policy does not consider coal to be the long term solution to meet the countries energy needs but Government still recognises that it will continue to play a part in securing our energy needs for some time and, therefore, it cannot be used as an overarching reason to refuse applications for coal extraction at this time.

The Energy Act 2013

The Energy Act 2013 has several objectives and, in relation to hydrocarbons (including coal), it seeks to make provision for the setting of a decarbonisation target range and duties in relation to it; or in connection with reforms to the electricity market for purposes of encouraging low carbon electricity generation, or ensuring security of supply. It is also about the designation of a strategy and policy statement concerning domestic supplies of gas and

electricity. It does not actually prescribe a new strategy or policy at this stage but instead sets the procedural requirements for doing so. It is likely, however, that future policy and strategy will reflect the overall objective of the Act to reduce our carbon footprint and, in turn, this will affect the future demand for minerals including fossil fuels.

National Planning Policy Framework

The NPPF sets out the Government's key economic, social and environmental objectives and the planning policies designed to deliver them. It states that the purpose of the planning system is to 'contribute to the achievement of sustainable development' and adds that there should be a presumption in favour of sustainable development. The term 'sustainable development' is not defined as such but the NPPF states that, in essence, it means that ensuring better lives for ourselves now does not mean worsening lives of future generations. It states that sustainability has three key dimensions, economic, social and environmental.

For decision making this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
 1. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in framework taken as a whole; or
 2. specific policies in the framework indicate development should be restricted.

The NPPF contains advice about applications for mineral extraction and states that MPA's should give considerable weight to the benefits of mineral extraction, including to the economy, but that they should also ensure that the development does not give rise to unacceptable adverse impacts on the natural and historic environment or human health, including from noise, dust, visual intrusion, traffic and flood risk. It recognises that minerals are essential to support sustainable economic growth and our quality of life, and that it is important, therefore, that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs.

It also recognises that minerals are a finite resource and can only be worked where they are found, so it is important to make best use of them to secure their long term conservation.

Paragraph 149 of the NPPF contains specific advice on proposals for the extraction coal and states that *"Permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national,*

local or community benefits which clearly outweigh the likely impacts to justify the granting of planning permission.”

National Planning Practice Guidance

The NPPG sets out guidance on the planning for mineral extraction, including assessing the environmental impacts, restoration and aftercare of proposed schemes. In relation to coal the NPPG advises that the environmental impacts of coal should be considered in the same way as for the minerals, however, operators and MPAs must have regard to the environmental duty placed on them under Section 53 of the Coal Industry Act 1994 when preparing and determining applications.

Local Development Plan

The DDMLP and the NEDLP both predate the NPPF and the NPPF transitional arrangements have now expired. Therefore, the weight attributed to the relevant saved policies may need to be moderated, in line with their degree of consistency with the NPPF.

Paragraphs 215 and 216 set out the weight that should be afforded to policies in existing and emerging local plans. They advise that the weight given to existing policies will depend on their consistency with the NPPF and, in the case of emerging plans, the stage of preparation and degree of consistency with the NPPF; the more advanced the preparation and the closer the policies are to the NPPF, the greater the weight that may be given.

Derby and Derbyshire Minerals Local Plan

Policy MP27: Coal Extraction and Colliery Spoil Disposal of the DDMLP is the main policy against which proposals for surface coal mining developments should be assessed. The policy is based on a presumption against proposals for coal mining development unless the impact on the environment is acceptable, or capable of being made acceptable by planning conditions or obligations; or if not, the impact is clearly outweighed by local or community benefits that the development would provide. The policy identifies a list of criteria to be taken into account in the assessment of environmental acceptability and also provides guidance for the consideration to the degree to which any benefits of a development may outweigh identified unacceptable adverse environmental impacts. Emphasis is given to those benefits that would be unlikely to be achieved by any means other than the proposed development.

Policy MP27 predates the NPPF; however, in contrast to the normal presumption in favour of sustainable development that runs through the heart of the NPPF, it maintains the '*presumption against*' stance of Policy MP27. The provisions of Policy MP27 are similar to Paragraph 149 of the NPPF with one notable difference; it does not specifically include national benefits as a material consideration. The weight that can be attributed to this policy may therefore need to be moderated accordingly.

Other relevant policies of the DDMLP are:

- MP1: The Environmental Impact of Mineral Development.
- MP2: The Need for Mineral Development.
- MP3: Measures to Reduce Environmental Impact.
- MP4: Interests of Acknowledged Environmental Importance.
- MP5: Transport.
- MP6: Nature Conservation – Mitigation Measures.
- MP7: Archaeology – Mitigation Measures.
- MP10: Reclamation and After-use.
- MP28: Opencast Constraint Areas.
- MP29: Coal Stocking.

Emerging Minerals Local Plan

Derbyshire County Council and Derby City Council are currently preparing a new minerals local plan which will, when adopted, replace the DDLMP. It will set out the provision for minerals and/or the approach to new mineral development proposals for the period up to 2030. The County and City Councils are currently undertaking an extensive consultation exercise, “Towards a Minerals Local Plan” setting out the main issues facing the replacement Plan and asking for responses to a set of options to establish the broad approach of the Plan to ensure it will deliver a sustainable supply of minerals to meet the identified needs of the local area and the country as a whole over the Plan period. At this stage, it does not provide any draft policies or proposals which can be considered material considerations in the assessment and determination of this application.

North East Derbyshire Local Plan

The NEDLP shows the application site as being located outside of the settlement development limits (covered by Policy GS5) and in the open countryside. Relevant policies of the NEDLP for this proposal are:

- GS1: Sustainable Development.
- GS6: New Development in the Countryside.
- GS8: Temporary Land Uses and Buildings.
- NE1: Landscape Character.
- NE3: Protecting and Managing Features of Importance to Wild Flora and Fauna.
- NE7: Protection of Trees and Hedgerows.
- NE8: Tree Planting.
- BE2: External Lighting and Floodlighting.
- BE6: Scheduled Ancient monuments and Archaeological Sites.
- BE9: Development in the Vicinity of a Listed Building.
- T2: Highway Access and the Impact of New Development.
- R11: Development Affecting Public Rights of Way.
- CSU4: Surface and Foul Water Drainage.

NEDDC is currently preparing a new local plan to 2033. A draft local plan for NEDDC was published in February 2017 and is currently being consulted on. The Hilltop Farm site is located in an area defined as a local settlement gap in the draft local plan under Policy SS11. This draft policy will permit development in Local Settlement Gaps “*where they do not erode local settlement gap functionality, such as:*

- i. Small scale agricultural development or appropriate rural development;*
- ii. Development which results in a net increase in the openness of the Local Settlement Gap;*
- iii. Proposals which seek to improve the environmental value and permanence of the Local Settlement Gap whilst maintaining its undeveloped character; or*
- iv. Proposals for the use of land for outdoor recreational or community uses.”*

The policy will not permit proposals “*where they would serve to remove or reduce the settlement separation and identify functions of the Local Settlement Gap unless the benefits of the proposals would significantly and demonstrably outweigh the adverse impacts on Local Settlement Gap functionality.”*

The consultation on the draft local plan is a Regulation 18 of The Town and Country Planning (Local Planning) (England) 2012 consultation and therefore little weight can be placed on this draft policy at this stage.

As part of previous consultations on the new local plan, NEDDC published a Schedule of Potential Housing Sites in February 2015. A site at Hilltop Farm, covering approximately 17ha, was included in this document with a potential yield for 359 houses to be built after 2022. This potential site for housing has not been taken forward in the recently published draft local plan.

Clay Cross Regeneration Framework

Another consideration for the development is the Clay Cross Regeneration Framework. Originally published in 2009, it was updated by NEDDC in 2013. Whilst it is not a formal planning document and not forming part of the Local Plan, it does have a role with NEDDC in terms of wider economic development and its regeneration vision for Clay Cross. It does not have adopted Policy status but is a useful supporting document on the wider regeneration of Clay Cross.

The principal vision in the framework is that:

"Clay Cross will capitalise upon its unique location within the Derby, Derbyshire, Nottingham and Nottinghamshire (D2N2) and Sheffield City Regions and its close proximity to the Peak District National Park to create a successful independent town."

Underpinning this vision are several Regeneration Objectives. These are:

- Empower and Engage the Local Community.
- Deliver Urban Quality.
- Create Living Neighbourhoods.
- Enable a Sustainable Economy.

The Framework also has several Connecting Themes. These are:

- Confident Clay Cross.
- Quality Clay Cross.
- Living Neighbourhoods.
- Healthy Landscapes.
- Doing Business.

Finally, the Framework focuses upon several action areas in the Clay Cross. These are:

- The Town Centre.
- High Street.
- Bridge Street Triangle.
- The former Biwaters site.
- Coney Green.

Of particular importance to this application are the action areas of the former Biwaters site and the Bridge Street Triangle, both of which are in close proximity. In terms of the Biwaters site, which sits immediately to the east of the application site, it has planning consent for a mixture of residential and employment development, extensive areas of open space, a hotel and local centre. A range of different partners will deliver these components and set high residential design standards for Clay Cross, creating a well-connected urban extension. A new road (A6175) through the site will link the A61 with Market Street at Coney Green, and at its midpoint will connect with Bridge Street. This new road will provide the main link for through traffic travelling east towards the M1 and for service vehicles to access the employment areas of the town.

With regard to the Bridge Street triangle the framework outlines:

“Maintaining an employment role, the area can build a reputation focused on manufacturing, servicing, and potentially the creative industries”.

Employment and public realm improvement are key policies within the Framework.

General Considerations

The extraction of coal by opencast surface mining methods usually involves substantial areas of land with significant intrusion and disturbance to the landform and can be extremely damaging to the environment and amenity of a locality. Extraction operations normally take place over a defined temporary period and, in this case, the proposed development would be for a period of three years, with a further six months to complete site restoration, although all restored sites take several more years to mature and assimilate back into the landscape. The type and range of the environmental and amenity impacts of surface mining are common to most developments; the main potential impacts of coal extraction are landscape and visual intrusion, noise and dust, and transportation. Other environmental issues that are particularly relevant to coal development include impact on the water environment, ecology, land stability, agricultural land and the potential effects on levels of investment in an area. The determining factors of acceptability usually rest on the sensitivity of the site and surroundings and the proximity of the site to people.

The main issues for consideration in respect of this proposal are:

- i) the impact of the development on the environment, in particular, the landscape and visual and impact on the character and appearance of the area, the impacts of noise and disturbance, air quality, traffic and highway safety, ecological, hydrology and flood risk, heritage, cumulative impacts and impacts on local communities;
- ii) the social and economic impacts of the development;
- iii) whether the proposed development would be acceptable in economic, social and environmental terms or could be made so by planning conditions/obligations, and if not;
- iv) if any of those impacts, in isolation or cumulatively, described under i) and ii) above are considered to be unacceptable, whether there are any national, local or community benefits of the proposal that would clearly outweigh the likely impacts.

Consideration of the Environmental Acceptability of the Proposal

The NPPF at Paragraph 144 states that when determining planning applications, LPAs should “*ensure in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality.*”

Paragraph 149 of the NPPF relates specifically to proposals for coal extraction and states that “*Permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations.*”

DDMLP Policy MP1 states that “*proposals for mineral development will be permitted provided that their impact on the environment is acceptable*”. DDMLP Policy MP3 states that “*proposals for mineral development will be permitted provided that any adverse effects on the environment can be eliminated or reduced to an acceptable level*”, having particular regard to a number of factors including the measures which are proposed to minimise the environmental impact of proposals. Proposals for mineral working will therefore be allowed only where the adverse effects on the environment can be avoided or reduced to an acceptable level, and this assessment is to be made having regard to all the considerations listed in Policy MP1.

A description of the location of the site and the potentially sensitive environmental receptors is provided earlier in the report; there are residential properties, local businesses, schools and sites of wildlife interest in close proximity to the site. The impacts likely to be of significance in this case are the amenity of the local area and residents through impacts such as noise, dust and traffic; landscape and visual impacts, impact on the social cohesion of the area, impact on the local economy, regeneration activities and cumulative impacts.

The separation distance between the application site and nearby residential properties is limited; some of the closest being approximately 30m from the site and it is surrounded by residential properties to the north, south and west. The proximity of the site to residential properties is, in my view, very close for this type of development. The proximity of the site to large number residential properties has been raised as a concern in the representations that have been received.

A number of residents have made reference to separation distances referred to in planning guidance for coal mining development in Scotland and Wales. The NPPG is the relevant planning guidance in effect in England, which provides guidance on separation distances/buffer zones for mineral development noting they may be appropriate in specific circumstances where it is clear that, based on site specific assessments and other forms of mitigation measures (such as working scheme design and landscaping), a certain distance is required between the boundary of the minerals extraction area and occupied residential property. Any proposed separation distance should be established on a site-specific basis and should be effective, properly justified, and reasonable. It should take into account: the nature of the mineral extraction activity; the need to avoid undue sterilisation of mineral resources, location and topography; the characteristics of the various environmental effects likely to arise; and the various mitigation measures that can be applied. It does not, however, suggest any specific distances as being appropriate. Reliance on a specific distance as the mitigating factor cannot be relied upon as there are other considerations as to how a development would affect amenity such as topography and prevailing wind direction.

The applicant states that it has considered the proximity of residential properties for this proposal. When designing, the site has incorporated measures to protect amenity from the adverse impacts of opencast coal extraction. It proposes to create soil storage mounds along the site boundary for noise attenuation and visual screening with the aim of reducing the impact of extraction operations for the duration of the excavation works.

Notwithstanding this, the main effects of working on residential amenity are likely to be noise, dust and visual impact. The separation distance is a major concern for this proposal. By way of comparison, the separation distances to individual and groups of housing at other coal extraction sites in Derbyshire that have been considered by this Committee in recent years, such as Lodge House and George Farm, are much greater. From experience of this type of development, the proximity of residential properties is likely to result in adverse amenity impacts.

The environmental effects of the development are assessed below. The assessment considers the individual topics reported in the ES and provides a summary of the main findings of the ES on each topic.

Noise and Vibration

The issue of noise is a significant one for this proposal due to the nature of the development and the proximity of residential properties to the extraction area. The site is located in a semi-rural area and the nearby residential properties, particularly those to the west and south of the site currently experience relatively low levels of background noise. The concerns of local residents about the impact of noise and disturbance from operations are understandable given the proximity of residential properties to the site.

When considering the impact of noise from development proposals, the NPPG advises MPAs to take account of the prevailing acoustic environment and in doing so, to consider whether or not noise from the proposed operations would give rise to a significant adverse effect or an adverse effect or whether or not a good standard of amenity could be achieved. The NPPG refers to the Explanatory Note of the Noise Policy for England which requires identifying whether the overall effect of the noise exposure is, or would be, above or below the “significant observed adverse effect level”.

The NPPG advises MPAs to aim to establish a noise limit, through a planning condition at noise-sensitive properties that does not exceed the background noise level by more than 10dB (A). However, it is acknowledged that in some circumstances, it will be difficult to not exceed the background level by 10dB (A) without imposing unreasonable burdens on the mineral operator. In such cases, noise from the operations should not exceed 55dB (A) LAeq 1h (free field) during normal working hours (0700 hours – 1900 hours) and during the evening (1900 hours – 2200 hours). Noise from night time operations (2200 hours – 0700 hours) should not exceed 42dB (A) LAeq 1h (free field). Where

an operation may give rise to particularly noisy short term activities, an increased temporary daytime noise limit of up to 70 dB (A) can be applied to facilitate essential site preparation.

The ES includes a noise impact assessment and background noise levels have been monitored by the applicant's acoustic consultant. The noise assessment was carried out in accordance with the guidance contained in the NPPF and the NPPG. Baseline noise measurements were recorded at eight locations around the site chosen to be representative of the housing in each area to the north, south and west. Background noise levels ranged from 34 to 42 dB LA90, 15 min, depending on the location.

The ES considers the likely noise levels that would be experienced at 10 noise sensitive properties, including a location at the Biwaters site, whilst the site is developed during both normal coal extraction and temporary operations, such as soil stripping and bund formation, taking into account the equipment to be used on site and different phases and methods of working the site. It also takes into consideration the impact from traffic noise from the movement of HGVs associated with the development. For each noise sensitive property, 12 different scenarios were assessed and a total of 120 sets of noise calculations produced. The assessment takes into account the mitigation measures that have been designed into the scheme which includes a restriction on working hours, the placement of soil bunds for noise attenuation and the screening of plant in the processing area by placing it 1m below existing ground level and the use of bunds.

The assessment predicts that a noise limit of 10 dB (A) above background levels for normal daytime operations would be exceeded for some of the scenarios. The use of further mitigation measures to achieve the recommended 10 dB (A) above background levels is considered, an example given is at the noise sensitive property, 8 Peters Avenue, where increasing the bund height to 6m as opposed to 3m would only reduce noise by 4 dB (A) and would still not be sufficient to comply with this level.

The ES states that the majority of the scenarios assessed would be at or below the upper noise limit of 55dB (A). However, there are predicted exceedances in 10 of the 120 scenarios, 5 of these are at Hilltop Farm where the applicant suggests that no upper noise limit is required due to the occupier's interest in the site. For clarification, this statement is not acceptable in planning terms. The occupiers should be afforded appropriate protection irrespective of their connection to the operator or their interest in the site. In addition, the occupancy of the property could change at any time during the proposed development whereby the new occupier that may have no connection to the operator.

There is 1 predicted exceedance at the Biwaters site, however, the applicant is of the view that this development would not be complete by the time that the

coal extraction operations are undertaken. Exceedances were also predicted in 4 other scenarios at noise-sensitive properties, relating to periods of removal of overburden of less than 8 weeks in duration, where the applicant considers it appropriate to apply to the higher noise limit for temporary operations.

For all locations during temporary operations, with the exception of Hilltop Farm, the assessment predicts that the 70 dB (A) upper limit would be met. Night time noise levels were assessed at below the night time noise limit of 42 dB (A).

The assessment concludes that the potential impact of noise would be “*at the very threshold of acceptability*” with noise levels for routine operations at or above the upper 55 dB (A) noise limit, particularly for locations situated away from the A61 where background noise levels are lower. However, considering the overall timescale of the development, significant noise producing activity at the nearest residential areas would be for a fraction of this time. The assessment also considers the cumulative impact of noise with other large developments in the area and concludes that there is no potential for adverse cumulative impacts. The author of the assessment report considers that it would impose unreasonable burdens on the mineral operator to comply with a site noise limit of 10dB (A) above background and an upper noise limit of 55 dB (A) for daytime operations and therefore, a limit of 70 dB (A) during temporary operations should be applied at this site.

The applicant has assessed the merits of increasing bund height to improve noise attenuation and has submitted a noise mitigation plan with the application. Increasing the separation distances to noise-sensitive properties would be a way of reducing the impact of noise but would also potentially reduce the amount of coal that could be extracted at the site and, in the applicant’s view, that compliance with a site noise limit of 10dB (A) above background would impose unreasonable burdens upon them. What constitutes unreasonable is not defined in the guidance but the intention of the guidance is not to allow the operator to generate higher levels of noise at the expense of the amenity of the occupiers of noise-sensitive properties.

It is inevitable that a coal extraction operation using surface mining techniques will increase the noise environment in the area. Experience from previous, similar developments demonstrate that the plant and machinery involved, the processing equipment and use of large lorries for transportation, have considerable potential to create nuisance noise, especially when the site is as close to residential properties as in this case. It is noted that the acoustic consultant expressed the view that “*the potential impact of noise would be at the very threshold of acceptability*” and there are aspects of the assessment that indicate the actual noise levels would be beyond the level of acceptability, particularly for some of the temporary operations.

The EHO is also of the view that some disturbance to local residents would occur. Noise from the development would also affect the users of the PROW within the site, although this would be only for a short duration. Guidance on what are considered to be temporary operations is provided in the NPPG, and whilst overburden removal is not specifically mentioned, it is a layer of material that has to be removed to enable mineral extraction to take place similar to soil stripping and the application of the temporary operations noise limit in these circumstances would not, in my view, be unacceptable in the context of the guidance in the NPPG.

However, I have some concerns about the applicant's assessment of when the upper noise limit of 55 dB (A) for day time operations would be exceeded and periods when the higher 70 dB (A) for temporary operations should be applied. A summary is provided in the applicant's noise assessment of the estimated number of weeks in a 12 month period when the calculated noise levels associated with soils and overburden movements (temporary operations) would be above 55 dB (A) at noise sensitive properties. Excluding Hilltop Farm, the summary within the ES suggests that 5 out of the 9 noise sensitive properties would experience noise levels above 55 dB (A), over a total of 22 weeks within a 12 month period. The applicant's acceptability of this is based on the assumption that no individual noise sensitive property would experience noise above the 55 dB (A) and up to the higher limit of 70 dB (A) for temporary operations for more than 8 weeks during any 12 month period.

The noise limits guidance for mineral development in the NPPG refers to 'noise sensitive properties' and not to a specific individual noise sensitive property. I disagree with the applicant's interpretation that, provided no individual noise sensitive property experiences noise above the upper noise limit for more than 8 weeks in a 12 month period, the proposal would be acceptable. The role of the MPA is to assess the potential impact of the development across the site and surrounding area, and I am of the view that when considering the impact of noise from the development, its impact on all noise sensitive properties in aggregate, over the duration of the development, should be considered as a whole and not on individual properties in isolation. It is clear from the noise assessment predictions that multiple noise sensitive properties would experience noise exceeding the upper noise limit at different times that would amount to more than 8 weeks in duration over a period of 12 months. For example, the predictions in the noise assessment indicate that noise above the upper noise limit in the first 12 months of the development would be experienced at the noise sensitive property (The Homestead) for 7 weeks, during overburden movements in cuts 1 to 3. Noise above the upper noise limit would then be experienced at a further noise sensitive property (40 Woodland Way) for 4 weeks during overburden movements in cuts 4 to 7. It is also predicted that a further noise sensitive property (25a Russell Gardens) would be experiencing noise above the upper noise limit during this time. This would result in 3 noise sensitive properties experiencing an aggregate of at least 11 weeks noise above the upper noise limit in this 12 month period.

I therefore do not agree with the conclusions of the noise assessment and I am of the view that noise from the proposal would, in fact, be beyond the limits of acceptability. Noise from what are considered to be temporary operations would exceed the recommended guidance for this type of development and, in considering the separation distance to dwellings, noise at certain times would be likely to be significant and adverse. There is also, in my opinion, potential for adverse cumulative noise impacts with the adjacent Biwaters site should both developments be taking place at the same time. The impact of noise from the proposal is considered to be unacceptable and therefore, in considering the overall acceptability of the proposal, the identified short term adverse noise impacts need to be balanced against the benefits of the proposal. An assessment of the benefits of the proposal as a whole is provided later in this report.

Mining can also be a source of ground vibration that can negatively impact on residential and local amenity. The blasting of rock on mineral sites is generally the main source of vibration issues, but no blasting is proposed for this development. There is potential for vibration from the movements of HGVs and from extraction operations in close proximity to residential properties and it could also impact on the users of the PROW, when passing through the site. However, I do not consider the impact of vibration is likely to significant.

In reaching this conclusion, I have taken into account the requirements of DDMLP policies MP1, MP3 and MP27 and the guidance in the NPPG. I would, however, recommend, in the event that the Planning Inspector is minded to grant planning permission for the development, that conditions are imposed setting strict limits on noise levels with the requirement for operations to cease in the event of the limits being exceeded, to control the working hours at the site and to require the implementation and adherence to the sites noise mitigation plan.

Air Quality and Dust

Local residents are particularly concerned about particulate emissions and dust issues from this proposal, and many have raised concerns about the potential impacts on health. It is recognised that mineral sites can give rise to dust through the movement of large amounts of soils and overburden and as part of extraction and processing operations, which needs to be mitigated and controlled. The NPPF at Paragraph 120 advises that in order to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.

The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (AQS) sets out the air quality objectives and policy options to improve air quality in the UK. The AQS sets out air quality objectives (AQO) for air

pollutants, which are target values, often expressed as a maximum ambient concentration not to be exceeded, for the protection of human health. If national objectives are not met, or are at risk of not being met, the local authority concerned must declare an AQMA and prepare an air quality action plan.

ES includes an air quality assessment (AQA) and states that the assessment has been carried out in accordance with the NPPF and associated technical guidance, as well as development plan policies.

The ES considers the relevant AQO and the existing pollutant sources in the area, however, the application site is not located in an AQMA.

The applicant has carried out baseline monitoring of dust and particulates over a 3.5 month period to establish the existing air quality conditions at the site. Passive dust monitoring, undertaken to determine the dust deposition rate at the existing site, was carried out using Frisbee dust gauges at five different locations around the site. There are no statutory limits with regard to dust deposition rates, the ES therefore assesses the proposal assessed against guidelines proposed by Vallack and Shillito (1998)¹. Baseline dust deposition rates were assessed to be relatively low with most of the monitoring results falling below the Vallack and Shillito guideline value for dust nuisance for outskirts of towns of $200 \text{ mg.m}^{-2}.\text{day}^{-1}$. However, there were periods of higher dust deposition where the guideline value was exceeded during one sample period which the assessment suggests was related to meteorological conditions.

Real-time dust monitoring to determine the levels of airborne particulates was also carried out at three monitoring locations within the site. The mean baseline concentration of PM_{10} across the three monitoring points was found to range between 18.8 to $32.8 \text{ } \mu\text{g.m}^{-3}$ and therefore below the respective 24 hour AQO criteria of $50 \text{ } \mu\text{g.m}^{-3}$. There was one occasion when a peak in concentrations of PM_{10} , above the AQO figure was recorded at the monitoring station adjacent to the A61. Concentrations of $\text{PM}_{2.5}$ were also recorded as ranging between 4.1 to $7.2 \text{ } \mu\text{g.m}^{-3}$ and below the AQO figure of $25 \text{ } \mu\text{g.m}^{-3}$.

PHE, in its original consultation response, raised some uncertainty about the baseline concentrations of PM_{10} . The applicant provided further clarification to support the ES and is of the view that it is difficult to establish a precise baseline for the entire site. The applicant undertook a review of published data sources including continuous monitoring operated by NEDDC and DEFRA background maps, in addition to the real time monitoring that had been carried out. Based on the review of published annual mean data sources baseline PM_{10} concentrations are anticipated to be in the range of $15\text{-}20 \text{ } \mu\text{g.m}^{-3}$ at the site.

The ES notes that there are sensitive receptors in the immediate vicinity of the site, which includes residential properties and residential care homes, and considers the potential emissions sources from the development. The potential for adverse dust impacts was identified, in the absence of mitigation, from fugitive dust and exhaust emissions from vehicles and plant movements, dust generation from earthworks including soil stripping, over burden removal, coal extraction, loading of dump trucks, stockpiling of subsoil and topsoil, the movements of vehicles off-site, coal processing and restoration works. The potential dust emissions magnitude from these operations, without mitigation is assessed as ranging from 'medium to large'.

The ES considers the sensitivity of the area and assesses the likely impacts of dust soiling, the potential impact on human health and on ecological receptors and the level of risk for each activity and receptor group. The risk of dust soiling impacts on sensitive receptors, in the absence of mitigation, is assessed overall to be 'medium risk'. The impact on ecological receptors is assessed as 'low risk'.

The ES acknowledges that there are adverse health effects associated with coal dust and considers the research surrounding this, which is primarily based on occupational exposure experienced by coal miners. The ES states that it is the respirable fraction of particulate matter that can potentially cause adverse health impacts and in the case of surface coal mining activities it is the smaller PM₁₀ and PM_{2.5} particles that have the highest potential for effect. However, it states that PM₁₀ and PM_{2.5} are generally associated with emissions from vehicles rather than fugitive dust from coaling operations. The risk of health impacts associated with PM₁₀ and PM_{2.5}, in the absence of mitigation measures, is assessed as being 'low' due to the distance of sensitive receptors from the dust generating activities and low background concentrations. The air quality impacts from traffic exhaust emissions associated with additional traffic movements from the development is assessed as negligible.

The ES considers the cumulative air quality impacts of the proposal with other permitted developments in the area. The ES considers the cumulative effects with the restoration works of the former Avenue coking works, which is located 2km to the north, at this distance, the ES does not consider there would be an overlap of receptors based on a maximum travel distance of 1,000m for PM₁₀. It also assesses the combined impacts from the development with the proposed EfW facility on Bridge Street and the St Modwen scheme and the ES assesses the worst case scenarios. One worst case scenario is considered to be from the combined HGV traffic from the EfW and the Hilltop scheme that would potentially result in an additional 100 movements per day along a short stretch of the A61. However, the assessment states, given the existing traffic flows on the A61, this is not likely to constitute a significant increase. A further worst case scenario would be in the event that groundworks for the western extent of the St Modwen scheme (whether

residential or commercial) occurred concurrently with cut 8 of the Hilltop scheme whereby dust generating activities would be approximately 35m apart and could potentially result in significant cumulative effects in the absence of mitigation. The ES concludes that the cumulative impacts with other development is not considered to be significant provided that all the sites employ appropriate mitigation as required by their planning consents.

The ES goes on to set out a range of operational mitigation measures and monitoring to be applied at the Hilltop site and a dust management plan is provided with the application. The applicant states that the measures are intended to ensure that emissions are controlled and that the residual effects of the scheme are 'not significant'.

I also acknowledge that local residents are concerned about this scheme in relation to the amenity impacts of dust and the health effects of airborne particulate matter. Perceived health fears are a material planning consideration and the importance of the role of planning in promoting healthy communities is set out throughout the NPPF. Paragraph 144 of the NPPF states that when determining planning applications LPAs should ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on human health.

Despite the conclusions of the assessment, I have similar concerns to those raised in the section above on noise. Due to the limited separation distance between the site and some properties, dust is likely to be an issue at certain times. It would also be likely to be an issue for users of the PROW. It is inevitable that opencast coaling operations will generate some dust emissions. Notwithstanding the mitigation measures that can be applied at such sites to limit the amount of dust generated and the dust nuisance caused, the main limiting factor is distance. There is also, in my view, potential for significant cumulative effects with the adjacent St Modwen development.

The issue of dust for this proposal is an area where the assessment of environmental acceptability of impact is, in my view, finely balanced. I am mindful of the comments of the EHO and PHE, and whilst they have not objected they have advised that effective monitoring and mitigation would be necessary. I would also tend to agree with PHE that it is not entirely clear what the baseline conditions are and therefore it may be difficult to attribute any increases in particulate levels to site operations. The baseline concentrations from the real time monitoring and the review of published data sources are not directly comparable as one is based on a 24 hour average and the other is an annual mean; they both, however, fall below the relevant AQO.

To conclude, the AQA that has been carried out does not indicate that the proposal would give rise to unacceptable levels of particulate emissions and dust. Nevertheless, I am mindful of the mitigation measures that would be necessary to minimise dust generation to an acceptable level. Similar

mitigation to what is proposed here has proved to be effective on similar sites in Derbyshire. However, as described previously, greater separation distances are usually involved. Despite the conclusions of the AQA, due to the limited separation distance and the potential for significant cumulative impacts, I cannot conclude that significant adverse dust impacts would be unlikely. Whilst the assessment indicates that the development would be unlikely to result in exceedances of AQO's, it is likely to cause some increases in PM₁₀ and PM_{2.5} around the site, a view that is shared by PHE. Whilst this increase would be unlikely to have any significant adverse impacts on the health of the local population, there is no 'safe' level for particulates, which the applicant acknowledges. Vulnerable sub-groups of the population such as the elderly or those with existing respiratory conditions are considered to be more at risk from high levels of air pollution. Therefore, as with the assessment of noise impact, in considering the overall acceptability of the proposal the potential for unacceptable dust impacts needs to be balanced against the benefits of the proposal.

In reaching this conclusion, I have taken into account the requirements of DDMLP policies MP1, MP3 and MP27 and NPPF and the guidance in the NPPG. I would, however, recommend, in the event that the Planning Inspector is minded to grant planning permission for the development, that conditions are imposed to require the implementation of the mitigation measures and the dust management plan.

Landscape and Visual Impacts and Impact on the Character and Appearance of the Area

The application site is located immediately adjacent to the settlement development area of Clay Cross in open countryside. The site is located within the Peak Fringe and Lower Derwent National Character Area (NCA) and abuts the Nottinghamshire, Derbyshire and Yorkshire Coalfield NCA to the east. At a local level the site is located within the Wooded Farmlands Landscape Character Type (LCT) as detailed in the Landscape Character of Derbyshire publication. This LCT is a mixed farming transitional landscape, the landform is gently rolling. The mudstone dominates and is overlain by seasonally waterlogged soils, with thinner free-draining soils over sandstone. The landscape is characterised by permanent pasture and woodland on the heavy soils, with occasional arable fields on the lighter soils. In more recent times, there has been an expansion in arable farming. Woodland, hedgerow and watercourse trees are prevalent, creating a well-wooded landscape.

The site also falls within a broader unit of landscape defined as an 'Area of Multiple Environmental Sensitivity' (AMES) of secondary sensitivity in a recent study by Derbyshire County Council² AMES are broad areas of landscape that have been identified as being sensitive with respect to a range of environmental datasets relating to ecology, the historic environment and visual unity, and allow for a strategic overview of the environmental sensitivity of the County outside the Peak District National Park. The definition of AMES has

been developed as a strategic planning tool to improve the ability to manage and deliver the most appropriate environmental objectives in areas where environmental benefits across all disciplines (landscape, ecology and the historic environment) are likely to be greatest as part of a sustainable approach. The approach underpins a number of specific policies in the NPPF. In general terms, those landscapes of highest sensitivity to change will be the areas where the landscape remains intact, both visually and structurally, has strong historic and cultural identity, and contain many widespread semi-natural habitats with associated linkages appropriate to the character of the area. The site in the second highest environmental sensitivity category retains a degree of strategic sensitivity and landscape value at the local level.

The NPPF, at Paragraph 109, states that “*The planning system should contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes.*” Policy MP4 of the DDMLP and Policy NE1 of the NEDLP are also of relevance for this proposal. Policy MP4 seeks to safeguard the environment and prevent irreparable or unacceptable damage to interests of acknowledged importance, such as valued landscapes. The policy does not permit proposals for mineral development where irreparable or unacceptable damage would result, and in respect of landscape, in particular where the development would be materially damaging to the inherent qualities of a special landscape area, unless there is an overriding need for the mineral which cannot reasonably be met from alternative sources in less environmentally important areas or where the development would cause unacceptable damage to an area of local landscape importance. Policy NE1 seeks to conserve and/or enhance local landscape character.

Landscape Assessment

The ES includes a Landscape and Visual Impact Assessment (LVIA) that considers the landscape and visual impacts from the proposed coal extraction and restoration operations at the site, as well as its cumulative impact with adjacent development, and then considers mitigation proposals where they are thought to be necessary.

The LVIA correctly identifies the landscape context, as described above. The applicant is of the view that the site demonstrates fewer characteristics of the Peak Fringe and Lower Derwent NCA and more of those relating to the Nottinghamshire, Derbyshire and Yorkshire Coalfield NCA and that the site is strongly influenced by the surrounding urban and industrial development.

The LVIA assesses the potential effects on local landscape character during the construction phase, operation and post restoration phases of the development. During the operational phase, it is assessed that the development would cause a significant change to the existing landform of the site, however, restoration of the site would reinstate the landform similar to the existing, with landform in some locations potentially exceeding existing levels by 2m. The development involves the removal of some of the site’s trees and

hedgerow, with the restoration of the site including new woodland edge planting and reinstatement of hedgerows, as well as new areas of species rich grassland to provide localised benefits in the longer term. In terms of land use the majority of the physical landscape resource to be temporarily lost would be arable and pastoral farmland of relatively low ecological value. The mining of this land would be significant in landscape terms, however, the duration of the operational works is relatively short and the adverse effects would be reversed through the restoration of the site. PROW would be affected but would also be reinstated as part of the restoration works.

The overall significance of landscape effects during the operational phase on the Peak Fringe and Lower Derwent NCA are assessed as minor adverse, on the Wooded Farmlands LCT as moderate adverse and on the AMES as minor-moderate adverse. For the immediate site context and the site itself, the landscape effects are assessed as major adverse.

The long term landscape effect (effect at year 15 post-restoration) on landscape character is assessed to be none to minor-beneficial.

Visual Assessment

The LVIA sets out the Zone of Theoretical Visibility (ZTV) from which there are likely to be full, partial or minimal views of the site and assesses the visual impact of the development from 10 viewpoint locations. The LVIA considers the visual impact of the development during the construction and operational phases on residential settlements and settlement areas, road users, PROW and recreational users.

During the construction phase of the development it is assessed that there would be some short term impacts upon visual amenity and that these effects would be confined to the application site and its immediate environs, and would be minor/moderate adverse overall. The majority would be views of large construction vehicles and machinery used to build the site and haul road and noise attenuation bunds.

During the operational phase it is assessed that the visibility of the development from residential settlements and settlement areas would be limited to the residential houses closest to the site, predominately those immediately bordering it; properties at the western edge of the site along Riber Crescent, Winster Close, Harewood Crescent and North Street and properties to the north-east off Derby Road (including Pear Tree Farm) and Brassington Lane. There would also be views from properties along Derby Road and Ashover Road to the north, Russell Gardens and Woodland Way to the west, and Peters Avenue to the south. The majority of views would be from first floor level although some ground floor views would be likely to be experienced. There is also potential for more distant views from properties on higher ground to the west. The overall significance of visual effects on residential settlements has been assessed as ranging from minor-moderate to major

adverse. The properties likely to experience the most significant visual effects are those located at Riber Crescent and North Street who are likely to experience views of the proposed overburden stockpile and noise attenuation bunds.

The LVIA also considers the visual effect on road, PROW and recreational users. There are potential views of the development from a section of the A61 Derby Road to the north-east of the site; the majority of views would be of noise bunds along the site perimeter. There may also be some fleeting views along Brassington Lane and more distant views from local lanes on higher ground. The visual effect is assessed as moderate adverse when passing the site and minor adverse where views are more fleeting. Views from the two PROW that cross the site and are proposed to remain open during the operations, one subject of a diversion, are assessed as being minor-major adverse depending on location within the site. There would also be close range views of the noise bunds and overburden stockpiles from the playing fields to the west and is assessed as being likely to result in moderate-major adverse visual effects.

The long term visual effects (effect at year 15 post-restoration) for the visually sensitive receptors described above, following the restoration of the site, are anticipated to become either negligible or minor beneficial overall depending on proximity to the site.

The ES sets out mitigation measures that have been incorporated into the design of the scheme to minimise the potential landscape and visual impacts, and provide longer term green infrastructure enhancement benefits. These include the conservation of the site's trees and hedgerows where possible and, where they are lost, reinstatement as part of the site's restoration, together with woodland planting bordering the site that would be supplemented and, reinforced with vegetation appropriate to the sites after use as farmland, to accord with the recommendations for the 'Wooded Farmlands' LCT. The restoration scheme is stated as being designed to encourage biodiversity, landscape and sustainability benefits, and would include a mix of connected habitats that would connect with existing woodland, hedgerow and trees within the site and the wider landscape.

The LVIA considers the landscape and visual effects of proposed opencast coal development cumulatively with two other potential developments to the east of the site. The potential energy from waste site located to the south-east is separated by well-established commercial and industrial development; the LVIA concludes that there is unlikely to be any inter-visibility between the application site and this development site. The other development located directly opposite to the east and is a mixed use development (located on the former Biwaters site). The LVIA concludes that there is potential for cumulative landscape and visual effects with this development but is likely to be contained and localised. Overall, the cumulative effects are considered

unlikely to be greater than moderate adverse and would be for a limited period of time.

The LVIA concludes that the proposed opencast site would inevitably result in significant landscape and visual effects during the operational phase, however, the restoration proposals have the potential to bring beneficial effects and therefore the proposals are not considered to result in any long term unacceptable landscape and visual effects.

Officer Assessment

The development would result in the wholesale removal of the existing on-site landscape. Whilst the applicant proposes to retain as many trees and hedgerow as possible, the development would still result in the loss of trees, hedgerow and ditches that have marked the field boundaries for many years. The magnitude of the change on the landscape character of the site during the operational phase would be high and adverse as acknowledged in the LVIA (Major Adverse).

Whilst I would agree with the applicant's assessment of the overall significance of landscape effects on the Peak Fringe and Lower Derwent NCA, the Wooded Farmlands LCT and the AMES during the operational phase, in my opinion the LVIA over emphasises the urban influence of Clay Cross situated directly to the south-east of the site. Whilst there is a residential area located directly to the west of the site, this wedge of open countryside is not dominated or influenced by the estate, but rather contributes to separating the housing estate from Clay Cross. The site links visually with Tupton and Mulberry Woods which separate the residential areas and visually link the site with the open countryside beyond. When viewed from the east the site is perceived as an extension of the Wooded Farmlands LCT located to the west of the A61. The site, is farmland and fields are enclosed by relatively intact hedgerows with some hedgerow trees. NEDDC in its consultation response comments that the site is a strategic gap between Clay Cross and Tupton. This wedge of land, helping to separate Clay Cross from Old Tupton to the north, is also valued by residents who have made representations regarding the enjoyment of the site that is crossed by two PROW and link to other footpaths in the area.

The topography of the site produces a ridgeline running east to west through the site from Hilltop Farm to Woodland Way, as well as being part of a moderate ridgeline sloping gently south to north. This results in the site being on higher ground relative to the surrounding residential areas and the A61, so despite the noise attenuation/screening bunds there would, in my opinion, be some adverse views into the site. The processing plant area would be located on the highest part of the site, the plant itself would be 3.5m high and coal stocking in this area is proposed to be up to 3m high enclosed by 5m high noise screening bunds. The combination of processing plant, stockpiles and

screen mounds on the highest ground would be adverse and visually prominent during the operational phase.

The proposal also includes the creation of a substantial 10m high overburden mound in the central area again on the most elevated part of the site, which could potentially be viewed as an adverse skyline feature from several locations as demonstrated by the photomontage at Figure 12B taken from the recreational ground off North Street. The situation would be further compounded by the construction of an additional 9m high overburden mound on the south-west boundary of the site, also shown in Figure 12B.

It is during the operational phase of the development where the visual impacts of this development would be likely to be most significant. The LVIA correctly identifies that the development would result in significant visual effects during the operational phase and that the visual effects would be adverse.

I have considered the viewpoints and visual receptors described in the LVIA. Some of the most significant visual effects would be when viewed from the residential properties on North Street, the playing fields to the west and from footpath 26 (viewpoints C and E in the LVIA). Their outlook would be looking east over the site where it is proposed to locate a number of storage bunds, including the 10m high overburden mound in the central area of the site during the operational phase. These would be highly prominent features from these viewpoints and would have a major adverse visual impact on these receptors.

There would also be significant views of the site from Brassington Lane and from properties and users along the A61 Derby Road, particularly as you approach Clay Cross from the north. From these viewpoints (viewpoints H, I and J), there would be views of the noise/screening bunds and potentially of movements of heavy plant along the haul road, and from more elevated locations along Brassington Lane (including Egstow Hall) views into the workings are also likely.

The development would, in my opinion, inevitably result in landscape and visual effects during the operational phase. Taking all these considerations into account, I find that the operational opencast site would have an adverse impact on the landscape character of the site and the immediate site context, a significant and substantial adverse effect on the visual amenity of the area, and these effects would last for approximately 3 years. This would diminish once the restoration of the site was complete, although it would take some time for the site to fully establish post restoration. The site restoration works are anticipated to take approximately 4 months but this would be dependent on the weather and time of the year, and it could be 15 years before planting is considered to have any significant mitigating landscape and visual impact.

The applicant considers that there would be visual benefits following restoration, however, I am of the opinion that any visual benefit would be very

minor. Several landscape and visual restoration benefits have been set out by the applicant, however, it must be remembered that the site is already a hedged landscape typical of the wider Wooded Farmland landscape both arable and pasture. The site would be restored to a landscape very similar to the current landscape. The submitted restoration scheme is only reinstating what would be lost, marginally enhanced by strips of woodland edge planting and some grassland and wetland habitats. The minor enhancements could, in my opinion, be achieved by other means and would not be dependent on the coal extraction taking place.

The applicant states that there would be an overall increase of 483m of hedgerows. This involves the replacement of 1,041m of existing hedgerow that would be lost and 483m that is proposed to be translocated off-site. However, I am of the opinion that the number of hedgerow trees is inadequate for the amount of hedgerow that is to be replanted. Hedgerow trees are often difficult to establish on restoration sites in disturbed ground and to achieve some visual effect, higher numbers need to be planted. A 2.9ha increase in 'woodland edge' planting is proposed, however, several of the proposed planting strips are not adjacent to any woodland. To positively contribute to landscape character and visual screening, planting should, in my opinion, be predominantly large native tree species/climax trees and not edge planting where I would anticipate a high percentage of shrub species.

The main visual benefit would be the screening of the Derby Road industrial site in views from the west, however, this would be more effective if it was proposed to plant large woodland species rather than woodland edge planting.

The applicant's LVIA acknowledges that the proposal would have a significant impact on the landscape character and visual amenity of the area during the operational phase of the development. However, I am of the opinion that the LVIA underestimates the likely harm and that it would have an unacceptable adverse impact of substantial significance affecting the character and appearance of the site and its immediate area throughout the operational life of the development that could not be made acceptable by the use of planning conditions or obligations. The landscape and visual benefits arising out of the proposed scheme are considered to be very modest and not dependant on coal mining. The beneficial effects of the restoration proposals on the landscape of the site and its immediate and wider context in the longer term are considered to be negligible. There are demonstrable adverse landscape impacts for this proposal; the scheme would only be reinstating what was lost and there is no apparent overall landscape improvement or benefits. The visual impact of the proposal would be significant and, considering the close proximity of the site to residential areas, it would, in my view, be intrusive.

Whilst the site does not have any special landscape designation, the AMES study demonstrates the site is in an area of local landscape value. The local value of the site is also high because of what has been lost in Clay Cross in

the past due to heavy industry and because people live right next to it and enjoy and experience it daily. Therefore the proposal, for the reasons set out above, is considered to be contrary to the aims of Policy MP4 of the DDMLP and the NPPF. It also raises conflict with the environmental acceptability aspect of Policy MP27 of the DDMLP and conflicts with policies MP1, MP3 of the DDMLP and policies GS6, NE1, NE7 and NE8 of the NEDLP. In the context of Policy MP27 and the NPPF, the overall acceptability of the proposal is therefore dependant on whether the overall proposed benefits of the development are significant enough to outweigh the short and medium term adverse landscape and visual impacts associated with opencast working at this site.

Ecology

The development of an opencast coaling operation has the potential to impact on the existing ecology of the site, natural heritage and designated sites. In addition to the requirements of DDMLP Policy MP1, Policy MP4 does not permit mineral development where irreparable or unacceptable damage would result to interests of acknowledged environmental importance, and in particular, where *'development would adversely affect nature conservation interests of international or national importance including...special areas of conservation, sites of special scientific interest...and the habitats of protected species'* and *'development would cause significant disturbance to other sites of importance for nature conservation'*.

The ES sets out the methodology used to assess the nature conservation and ecological interest of the site and surrounding area, and refers to a desk top study carried out to obtain background information, ecological surveys that have been undertaken which includes an extended phase 1 habitat survey, and follow up surveys for bats, reptiles, breeding and wintering birds, an arboricultural assessment and a tree survey.

Statutory and non-statutory designated sites

The ES considers the potential impact of the development on statutory designated and non-statutory sites of nature conservation value and ecological interest within the vicinity of the site. There are no statutorily designated sites within 2km's of the site, although there are number of other non-statutorily designated sites within this distance. These include three LWS's and two non-designated pLWS's within 1km. The ES acknowledges the potential risk to these sites from dust and other types of pollution, however, it concludes that no impacts are anticipated due to their distance from the site and relative remoteness from site operations.

Habitats

The ES assesses the baseline conditions and the habitats found on the site. The site comprises a mosaic of arable farmland with compartments of semi-improved grassland divided and bordered by native hedgerows and areas of woodland and field boundary trees. Scattered scrub was also occasionally

identified in some parts of the site; stream and pond habitats are also present. Two invasive species Japanese Knotweed and Himalayan Balsam were also recorded on the site. All the habitats within the site were assessed as being of nature conservation value at a local level only. The ES goes on to assess the impacts of the proposal on these habitats and the species they support.

Arable Land

The majority of the arable land would be lost; the significance of this loss in the absence of mitigation is assessed as being minor negative. New arable land is proposed to be created in restoration and, together with the proposed management of conservation, headlands surrounding the arable land are assessed to have a minor positive impact post restoration.

Semi Improved Grassland

There would be minor negative impacts on the semi-improved grassland with almost all being proposed to be lost. New species rich grassland would be created during site restoration and it is assessed that this would also have a minor positive impact.

Woodland and Individual Trees

A number of tree groups and individual mature trees would be lost, as described earlier in the report. The woodland between cuts 3 and 4, and the broadleaved plantation to the north and west of the site would be retained. The loss of trees is assessed as having a minor adverse impact for nature conservation. New planting is proposed as part of the site's restoration and it is assessed that this would also have a minor positive impact. The ES identifies the potential for long term negative effects on the woodland areas to be retained from dust pollution and root damage during the operations. Without mitigation, this is assessed as being of minor to moderate significance. The implementation of root protection areas and the use of dust suppression measures are proposed to protect the trees and the ES concludes that this impact is not likely to be significant.

The small quantities of scrub were considered to be of low ecological value overall but were found to offer some limited nesting opportunities for birds and foraging wildlife. Given the limited extent of the scrub, its loss is assessed as negligible.

Hedgerow

A total of 22 hedgerows were found to divide and border the site, 8 of which were identified to be of moderate to high conservation value. All of the hedgerows were found to comprise of over 80% native species and are therefore classified as Habitats of Principle Importance under the Natural Environment and Rural Communities Act (2006) (NERC). One hedgerow was classified as being important under the Hedgerow Regulations (1997). The proposal would result in the loss of hedgerow as previously described, including the one hedgerow that is classed as important under the Hedgerow

Regulations. In the absence of mitigation, the ES assesses the loss of hedgerows as having a moderate adverse impact for nature conservation. Some of the hedgerows that have been identified of local importance are proposed to be translocated and replacement hedgerow planting is also proposed in the restoration scheme for the site, which would include the direct replacement of the hedgerow and hedgerow trees to be lost. The ES assesses that this would provide long-term minor benefits through the overall enhancement of the hedgerow and woodland/tree resource and the overall impact on hedgerow would not be significant.

Streams and Ponds

There is a stream located within the woodland between cuts 3 and 4 although the ES states that it would not be directly affected by the proposal but could be potentially subject to disturbance by inadvertent pollution or dust deposition. This could potentially have a negative effect on the habitat and the fauna it supports and such impacts would be considered to be of minor to major significance. There is a ditch on the south-western boundary of the site that is proposed to be re-profiled to improve drainage. The potential effect of profiling is assessed as being minor adverse. There are a number of field ponds located outside of the extraction area which would be retained, the ES does not predict any impact on these receptors. The site restoration proposals now include the modification of retained water attenuation lagoons to form wet scrapes, and improvements to the brook corridor.

Bats

The ES assesses the impact of the proposal on the local bat population and specific bat surveys have been carried out on the site. The arable and grassland habitats were considered to only provide poor quality foraging and commuting habitats for bats. The surveys recorded generally low levels of bat activity, but with some areas and habitats experiencing occasional moderate activity. The ES considers the species types that were recorded and their relative abundance on the site to be typical for the size of the site, the habitats present and its geographical location.

The ES considers that the loss of internal site hedgerows and trees and the fragmentation of bat habitats, would lead to a long term impact on the local bat population of minor significance; perimeter hedgerows and trees would be retained and would continue to provide habitat corridors and, therefore, commuting and foraging opportunities. No bat roosts were identified during the surveys; however, three mature trees have low potential to support roosting bats and are proposed to be retained. The trees are proposed to be protected from the development by fenced root protection areas and the potential impact on bat roosting sites is assessed as negligible.

The indirect impacts on potential tree bats roosts, and to foraging and commuting habitats from noise and artificial lighting are also considered in the ES. Before the implementation of any mitigation measures, the impacts of

such disturbance, and particularly for those species of bats that are more sensitive, needs to be assessed. The ES states that lighting would be carefully designed so as to minimise the impact on bat habitats.

Badgers

The ES states that the site provides suitable habitat for badgers, however, no evidence of their presence on site has been recorded and it concludes that the proposal would have a negligible impact on this species.

Great Crested Newts (GCNs)

The ES states that the site supports very limited suitable terrestrial habitat for GCNs and there are no known ponds within 250m of the site and no known breeding ponds within 500ms. It is considered extremely unlikely that this species is present on the site and the impact would be negligible.

Riparian Mammals

The ES states that the site does not provide any optimal habitats for otter or water vole, no evidence of either species was found during the site survey, however, it may be used on occasions by commuting individual otter. The ES considers that the proposal would have a negligible impact on these species.

Reptiles

The ES considers the potential impact of the proposal on reptiles, the site is considered to provide some limited areas of suitable habitat, however; no reptiles were recorded during the surveys that were undertaken. The proposal would result in the loss of sub-optimal reptile habitat, and the impact on local reptile populations is assessed as negligible.

Birds

The wintering bird survey identified a total of 43 species within and on land surrounding the site, all of which are common wintering birds in Derbyshire and the UK. Twenty were 'notable' species appearing either on the Royal Society for the Protection of Birds (RSPB) Birds of Conservation Concern (BoCC) red and amber lists as declining or are listed on Schedule 1 of the NERC and/or the Local Biodiversity Action Plan (LBAP) lists. The spring/summer breeding bird surveys identified 38 bird species within and on land surrounding the site, all of which are common and widespread breeding birds in Derbyshire and the UK and 9 of which were 'notable' species. No notable species were confirmed as breeding within the site.

The proposal would result in the loss of open habitats and hedgerows used by over wintering birds. The ES states that the proposal would have a minor negative residual impact on populations of grey partridge, skylark, linnet and yellowhammer due to the loss of arable farmland which these species forage on. It would also have a minor negative impact on starlings due to the loss of grassland. Following the completion of restoration, the ES considers that the

proposal would have a minor positive effect for wintering birds through the creation of woodland edge, species rich grassland and arable field margins.

The proposal would also result in the loss of habitat for breeding birds. The ES states that the proposal would have a minor negative effect on four species, dunnock, grey partridge, skylark and yellowhammer. Following the restoration of the site back to lowland arable farmlands, the long term impact is assessed as negligible.

Invertebrates

A total of 177 invertebrate species were recorded on the site, two of which were nationally scarce fly species. The ES assesses the site to be of low conservation value for invertebrates. During the extraction phase there would be a loss of hedgerows which are identified as a primary habitat for invertebrates at the site. The proposal is assessed as having a potential minor negative impact on invertebrates. Following restoration, it is assessed that the proposal would have a minor positive impact on invertebrate species.

The ES sets out a range of good practise working methods to reduce the potential impacts on habitats and the species present on site. It also details habitat creation and enhancement proposals. In summary, this would include the creation of species rich grassland, arable headlands, the replacement planting of hedgerow and hedgerow trees, new woodland planting, the creation of wetland scrapes and an enhanced drainage ditch. Bat boxes would also be provided around the site. The applicant has also provided with the application a five year ecological management plan. The ecological assessment concludes that restoration of the site would provide a long term net gain for biodiversity and, with the mitigation measures and implementation of the ecological management plan, there would be long term minor positive effects for ecology and nature conservation. The ES considers the cumulative effects of the proposal with other development and concludes that, given the temporary nature of the proposal, no cumulative adverse impacts would occur.

Officer Assessment

I am satisfied that the nature and scope of the ecological assessment and the survey work that has been undertaken is appropriate and has been carried out to the necessary standards. The applicant's overall assessment of the ecological value of the site is low, however, many representations have been received from local residents about the local value of wildlife at this site. It is clearly of value to the local community from an ecological perspective, and is similar to the local landscape value that has been placed on the site.

The proposed opencast coaling operations would remove habitat and foraging grounds until such time that the restoration of the site is well established, which could potentially take up many years to establish. There are habitats of local value on the site, the most notable being the sites hedgerows and hedgerow trees; the site is also of some local interest for birds. It is inevitable

the proposal would result in considerable disruption to local wildlife with the permanent loss of some features of ecological interest. There is also the potential for adverse impacts on retained habitats from dust and other pollution, and such pollution could also potentially impact on nearby LWS's.

The applicant has proposed mitigation measures to limit the impacts of the proposal and habitat creation and enhancement as part of the restoration scheme for the site, which, the applicant considers, would provide minor positive benefits. However, it would take some time for these features to establish following the completion of the sites restoration. The excavation of the site would have an adverse impact on local wildlife in the short to medium term. The restoration scheme, in my opinion, is not overly generous on habitat creation and is largely only replacing what is proposed to be lost with some very minor ecological benefits over time, which in themselves would also depend all elements of the restoration scheme being successful.

Overall, I do not dispute the conclusions of the ES on ecology and despite the very modest ecological benefits of the proposed scheme, I find no strong ecological argument against this proposal. The proposal may therefore be considered to be acceptable from an ecological perspective. However, in the event that planning permission were to be granted for this proposal, I would advise that conditions would be necessary to ensure that the development is carried out in accordance with the submitted details and the proposed mitigation measures are implemented. I would also support the view of DWT that a LEMP should be required. In reaching this conclusion, I have taken into account the requirements of DDMLP policies MP1, MP3, MP4, MP6 and MP27, NEDLP policies NE3 and NE7, the NPPF and the guidance in the NPPG.

Traffic and Highway Impacts

The transport of minerals from quarries can potentially impact on local amenity, cause public safety concerns and environmental problems, such as noise, vibration, and air pollution. Policy MP5 of the DDMLP permits the transport of minerals by road provided there is no feasible alternative which would be environmentally preferable, the access arrangements would be satisfactory and the highway network is adequate to accommodate the traffic generated and it would not be detrimental to road safety or have an unacceptable impact on the environment. Paragraph 32 of the NPPF states that "*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*"

The ES states that the proposal would generate 9,000 lorry movements taking coal from the site over a 36 month period which equates to about 250 lorry loads of coal out of the site per month, therefore, on average, there would be 12 loads (24 movements) per working day. A TA included within the ES assesses the impact of traffic generation, highway safety and environmental issues from the development, and has been based on a peak of 20 loads (40

movements) per day. It also takes into consideration the movements of site employee's cars and HGV movements for site preparation works prior to extraction and describes the proposed site access arrangements and HGV routing arrangements. The applicant has also provided an addendum to the TA updating the access arrangements to reflect the proposed use of the new roundabout on the A61 and to update the accident assessment.

The TA considers that the level of external traffic movements from the site on a daily basis would be relatively modest and assumes that the movements would be spread out over the working day and would equate to around 3 movements an hour. It also assesses worst case scenario which is considered to be 6 movements an hour. The addition of 6 HGV movements on to the A61 per hour is assessed to equate to an increase of 0.5 % and is not considered to be material in the context of the wider highway network.

The TA considers highway safety based on personal injury accident data for the latest five year period, which indicates that there have been no fatal accidents involving HGV's. The ES concludes that there are no specific issues relating to highway safety that need to be addressed. It also considers the environmental impact of traffic and concludes that the development falls below the threshold for requiring any further assessment and would have no material impact. The cumulative impacts of operating the site in conjunction with other planned and permitted developments in the vicinity is also assessed and it is not considered likely that the development would combine with other development to give rise to unacceptable adverse cumulative impacts. The TA concludes that the proposal would not have any material adverse impact on the safety or the operation of the highway network.

The concerns raised in representations about the TA and access arrangements are acknowledged, however, the applicant has provided additional information. Access to the site is proposed from a new roundabout that has been constructed to facilitate the adjacent Biwaters development. The applicant has satisfactorily amended the proposed access arrangements to the site to accord with the design of the new roundabout. HGVs from the site would be required to follow a route out of Clay Cross using 'A' roads towards to the M1 motorway and therefore would largely avoid residential areas. The development is for a temporary period and there would not be any long term residual highway impacts from the proposal and I accept that the cumulative impacts on the highway network would not be significant. The number of vehicle movements, the routing of those movements and the conclusions of the TA have been accepted by the Highway Authority and it has not raised any objection to the proposal.

There are local concerns about the impact of traffic on amenity and local congestion, however, I am satisfied that it has been demonstrated that the development would not generate significant amounts of traffic and it could be absorbed into the capacity of the existing road network. I do not find the

development to be unacceptable in terms of traffic and highway safety, and the proposal would not raise conflict with policies MP1, MP3 and MP4 of the DDMLP and T2 of the NEDLP. The potential amenity impacts of noise, vibration and dust from HGV movements have been considered above.

Archaeology and Cultural Heritage

The ES assesses the archaeological interest of the site and the impact of the development on cultural heritage and the historic environment, within a study area extending 500m from the application site boundary.

The ES includes a Cultural Heritage Assessment which sets out the existing baseline conditions at the site, the archaeological interest and built heritage of the site and its surrounding environment is assessed through a desk top study and an archaeological geophysical survey of previous undisturbed parts of the site.

The ES states that there are no designated heritage assets within the site boundary; however, there is one non-designated heritage asset, the route of the former Stretton and Ashover Light railway. The asset would be largely unaffected by the works, except for the area within the proposed coal processing area which would be reinstated upon restoration of the site and the land made available for the possibility of restoring the track sometime in the future.

Within the wider study area, a total of 34 assets were identified including a scheduled monument, a conservation area and 9 listed buildings or structures. Sections of the Ryknield Street Roman road are located adjacent to the site to the east and it is considered likely that the road runs through a small part of the site. However, the geophysical survey provided no evidence of the existence of the road within the application site. The survey did identify a number of anomalies that could equally be natural in origin or archaeologically related. The applicant is proposing to undertake targeted trial trenching to investigate those parts of the site where the anomalies have been identified close to the projected line of the Roman road. The assessment concludes that the proposal is unlikely to have a significant adverse impact upon cultural heritage assets.

I would generally agree with the conclusions of the assessment report, however, there are a number of anomalies and features that have been identified that could be associated with archaeological features. The projected line of the Roman road should enter the site in the vicinity of Hilltop Farm running parallel to the eastern boundary. A geophysical survey cannot always identify with certainty whether recognised anomalies are archaeological or natural and this can only be identified through intrusive investigation.

The NPPF at Paragraph 128 states that LPA's "*should require an applicant to describe the significance of any heritage assets affected, including any*

contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance". It then goes on to say "where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation."

Further field evaluation is considered to be necessary for this proposal to be able to assess the presence or not, and the significance of an archaeological interests within the site. The applicant has submitted a specification for test trenching with the application and, in considering the low potential for archaeological remains revealed by the geophysical survey, I am satisfied that this could be done at a later date but would be required prior to the commencement of any development on site. Following the programme of trial trenching, a further phase of archaeological recording may be necessary and this would require the preparation of a detailed Written Scheme of Investigation (WSI), however, I am satisfied that test trenching and the WSI could be satisfactorily secured through the imposition of conditions.

There are listed buildings in relatively close proximity to the site, the closest being Pear Tree House located in an elevated position on Derby Road and Egstow Hall and outbuildings located off Brassington Lane. Whilst there would be no direct impacts on the listed buildings, visually there will be changes to the landscape which would temporarily impact on their setting. Overall, the impact on listed buildings would be minor and the significance of these buildings is unlikely to be affected by the development.

The Clay Cross Conservation Area, which includes the grade II listed St Bartholomew's church, is located to the south of the site. There is intervening urban development between the site and the conservation area and I do not consider that its setting or significance would be affected by the development. Part of the former route of the Stretton to Ashover Light Railway runs parallel to the southern boundary of cut 7 and within the northern part of the coal processing/stocking areas, and would be affected by the development. However, the applicant's assessment states that the cut areas would not truncate the remains of the railway and it would not be stripped of topsoil, the buttress to the bridge would also be unaffected.

In conclusion, I do not consider it likely that the development would have any significant impact on any historic feature and it would accord with policies MP1, MP3, MP4 of the DDMLP policies BE6 and BE9 of the NEDLP and the NPPF in this respect.

Water Environment

The assessment of the impact on the water environment is a complex topic, which, in this case, has been subject to some successive requests for further

information under the provisions of Regulation 22 of the EIA Regulations, as referred to in the 'Environmental Statement' section of this report. Further reference is made to the details of the comments from consultees on this topic and the information provided by the applicant for the ES in the 'Consultations' section of this report. In summary, the applicant, when submitting the application, sought to provide within the ES an assessment of the likelihood of significant effects on the water environment which relied on a geological and hydrogeological assessment and a FRA. Several times subsequently, it was concluded, on behalf of the Council as MPA (the Council each time having received, and taking into account, comments/information via consultees and/or other representations), that some further water-related information was required for the ES, to enable the ES to meet the requirements of EIA Regulations. Therefore, at these times, as required of the MPA by Regulation 22, the applicant was requested to provide further information. The most recent request arose after a replacement FRA was provided by the applicant in connection with a previous request. Taking into account feedback from LLFA officers, this was also found not to provide sufficient information in some water-related respects for adequate assessment of the environmental impact of the proposal. The Council, as MPA, therefore made another request for further information under Regulation 22 in October 2016, and further information was provided in respect of this request through material marked as a draft (initially via an email to an LLFA Officer in the Council) in December 2016.

As detailed in the 'Environmental Statement' section, the provision of this information has recently been publicised as required under the EIA Regulations, and the period under the Regulations for making of representations about this ends on 16 March 2017. If any such representations are received which might affect any relevant considerations in respect of this application, this will be brought to the attention of the Committee so that they can also be taken into consideration at the meeting to which this report is to be presented.

Notwithstanding this, I have made an assessment of the environmental impact of the proposal on the water environment on the basis of the information that we have at this time, including the information supplied to the LLFA in draft form. The proposal has the potential to impact on the water environment within the site and in the surrounding area, and many residents have raised concerns about the potential impact of the proposal on known flooding issues locally.

Policy MP4 of the DDMLP includes water resources as an 'interest of acknowledged environmental importance'. The policy states that mineral development proposals, which seriously damage these interests, will not normally be acceptable, particularly where development would adversely affect the quality and quantity of water resources, water supply, land drainage or flood protection interests, or create water pollution problems. The NPPF at

Paragraph 103 states that *“when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere.”*

The ES assesses the potential impact of the proposal on hydrology and hydrogeology. The site is underlain by a Secondary A Aquifer, but is not located in a groundwater source protection zone. The inflow of groundwater into the excavation is assessed to be relatively low and it states that groundwater inflow could be managed through the pumping of water from the extraction voids into retention lagoons, to allow for the settlement of suspended solids, prior to the discharge into existing Watercourse 2. The ES states that the development would not have a drawdown impact upon the existing stream beds. The potential effect of drawdown on Far Tupton Wood is also assessed and concludes that the water supply to the Wood would not be affected by the extraction operations. The ES also considers swelling and shrinkage of the bedrock which is not considered likely to be significant and the settlement of backfilled materials, and concludes that the settlements should have little impact on the agricultural afteruse of the site. Cumulative impacts are also considered and it is concluded that no adverse cumulative impacts are likely. Overall, the ES concludes that there would be no significant adverse hydrological and hydrogeological impacts from the proposal.

The ES, with the replacement FRA and draft further draft information, considers the flood risk of the proposal. The baseline conditions at the site and its flooding history are assessed. The site lies within the catchment of two main rivers, the River Rother located approximately 1km to the east and the Press Brook located approximately 200m to the west. The site is identified as being located in Flood Zone 1 (low risk of flooding area) and that there are watercourses within the site. An unnamed watercourse (Watercourse 1) is located between the northern two fields, between cuts 3 and 4 and outside of the extraction area. A second water course (Watercourse 2) is located to the south-west of the site and is also outside of the extraction boundary. The presence of a third watercourse in the central area of the site has been assessed by the applicant and, in the most recent draft information that has been supplied, this is described as a shallow ditch with significant hedgerow growth falling into a small diameter pipe.

The applicant's assessment of historical and anecdotal evidence suggests that areas to the west and north of site are at risk of flooding from surface waters and sewers. The assessment also acknowledges that the LLFA is currently investigating flooding issues to properties on Ashover Road to the north of the site. The source of flooding is stated as currently unknown and that the proposal would not impact upon this source of flooding. The assessment considers the risk of flooding from ordinary watercourses and concludes that the overall risk of flooding from watercourses 1 and 2 is low, however, there is a risk of flooding along the south-western boundary of the site from Watercourse 2. The risk of flooding from overland flow and surface

water, artificial sources, sewer and groundwater is also assessed and considered to be low risk.

The assessment considers the impact of climate change on flooding at the site. A flooding risk from Watercourse 2, as a result of climate change, is considered likely.

The applicant's assessment considers the impact of the proposal on flood risk. The creation of haul roads would increase surface water run-off rates. The site would be excavated below the existing groundwater level and, during the excavation/operational phases of the development, there would be a risk of flooding from groundwater and surface water run-off within the cuts. However, the water would be pumped out to the treatment lagoons, prior to being discharged, and the risk is assessed to be low. The impact of the site's restoration on flood risk is also assessed, changes in site gradients and potential changes in permeability are not considered likely to have a significant impact on flood risk provided that appropriate mitigation is provided and may provide benefits with regard to surface water. The applicant's FRA goes on to set out range of mitigation measures to manage the flood risk at the site which includes works to Watercourse 2 so that it is suitable for water discharge and to provide longer term benefits to the nearby properties.

For this proposal, the issue of flood risk and the existence of a third watercourse and a sough within the site, have been the subject of much discussion. Information supplied to the Council suggests the existence of a third watercourse in the central area of the site that had not been originally identified in the applicant's FRA. Requests were therefore made to the applicant for further information about the existence of this feature. Details of the impact of the proposal on this feature and how the applicant intends to manage water from this source during the proposed works, are described earlier in the consultations section of this report.

The applicant's replacement FRA and the subsequent draft information has provided further details. The applicant describes the watercourse as a drainage ditch which lies within the proposed coal processing area and cut 9. The proposed works would require the head of this ditch to be cut, the majority would be within the coal processing area with the remaining southern section falling within cut 9. The applicant has indicated that water from the source would be managed within the coal processing area and would be pumped to the lagoons, which would be designed to be able to accommodate all the surface water falling into any working areas and the coal processing area at any one time. Notwithstanding the requested plan showing the water catchment area for watercourse 3, the LLFA has indicated that the draft information provides sufficient information about this watercourse.

The Council has also received information about the existence of a sough in the northern area of the site as part of investigation works into the flooding

issues at properties to the north. The LLFA is concerned that the proposed works could potentially impact on the flooding issues to the north and that a sough, if it were found to exist, could be channelling water. The potential sough was not considered in the original application documents, however, following further requests from the Council, the applicant provided further information in the replacement FRA and in the draft further information. The applicant has acknowledged that if a sough is present and is damaged by the proposed works it could cause surface water flooding in the area. The applicant states that an error was made in the FRA which discussed the undertaking of a Ground Penetrating Radar (GPR). The survey carried out was a magnetic survey for the purpose of archaeological investigation. It is the applicant's view that this survey neither proves the existence or absence of such a feature. The applicant concludes that it would be unlikely that any form of geophysical survey would identify such a feature.

The applicant's review of mining records has identified shallow workings in the northern part of the site that would be encountered at a depth of 20m below ground and any sough or mine drainage features not shown on mining records would be within the zone of the coal seam and would follow the course of the seam. The applicant states in its draft submission that any such drainage channels would be carefully diverted to avoid flow blockage with the inlet and outlet carefully maintained and controlled. On completion of extraction and prior to back filling the channel would be reinstated. The applicant concludes that if any soughs were found it would not have any long term impact on surface water and flooding.

I acknowledge that local residents are concerned about the impact this proposal would have on local flooding issues and this is understandable given the issues being experienced by some properties. There are also concerns about the impact on the Press Brook and on other water environments beyond the site. The assessment of impact on the water environment has not been a straightforward one for this proposal and has necessitated repeated requests for further information and ongoing consultation with the relevant regulating bodies. However, notwithstanding the applicant's position on the draft information, it would appear that the ES and the further information now provide enough information to be able to make an assessment on the proposal acceptability. The LLFA has also indicated that it is satisfied with the information contained in the draft submission.

In general, I am of the view that the proposal could be implemented without significant adverse impact on local water resources. The proposed works to Watercourse 2, whilst necessary to facilitate the development, are also likely to provide some local benefit. I note, however, that the overall application provides limited detail in relation to the sites proposed drainage strategy and water management, neither does it provide any substantive details or assessment of the proposed works to Watercourse 2. The applicant and the LLFA have suggested that this further information could be provided at a later

date by way of planning conditions. I am also mindful of the comments of Network Rail and the potential impact of water from the site on the railway tunnel. Whilst the applicant has proposed to provide the further information requested by Network Rail at a later date and Network Rail has accepted that this could be secured by way of a planning condition, I am of the view that this would be best secured through a legal agreement.

Whilst I have reservations about the amount of detail that is proposed to be provided at a later date for this proposal, subject to the imposition of a comprehensive suite of conditions to secure the submission of details and mitigation measures and a legal obligation with regard to the further information in relation to Network Rail property, I do not find any substantive hydrological, hydrogeological or flood risk argument to warrant refusal. In reaching this conclusion, I have taken into account the requirements of DDMLP policies MP1, MP3, MP4, and MP27, NEDLP Policy CSU4, the NPPF and the guidance in the NPPG.

Soils and Impact on Agricultural Land

The impact of mineral development on agricultural land and the feasibility of achieving a high standard of restoration are important considerations when determining applications affecting farmland. Policy MP4 of the DDMLP restricts proposals for mineral development where it would result in the irreversible loss of best and versatile agricultural land (grades 1, 2 and 3a). Policy MP10 seeks to ensure that satisfactory provision is made for the reclamation and aftercare of the site to a condition suitable for their acceptable afteruse.

The site is currently in productive agricultural use, consisting largely of a mix of arable and grazing/pasture land. The ES describes the agricultural land as generally in a poor state, mainly as a result of sub-standard restoration works that have taken place following previous mining activity on parts of the site. The ES identifies the land as being classified as Grade 3b and 4 Agricultural Land of moderate and poor quality. The ES states that the restoration works proposed as part of the coal mining scheme present an opportunity to improve the quality of the land by following a soil restoration strategy and the implementation of a comprehensive land drainage scheme.

The proposal would result in the loss of all the agricultural land whilst the site is being developed but would not affect any land classified as best and most versatile. The ES also provides a soil handling strategy intended to assure a good quality restoration at the end of the scheme. Natural England raises no objection provided any permission is subject to its conditions for soil safeguarding. I do not consider that there would be any adverse impacts on soil quality or agricultural productivity in the long term and, in this respect, it would accord with policies MP4 and MP10 of the DDMLP and the NPPF.

With regard to the applicant's claims that the development presents an opportunity to improve the agricultural quality of land, whilst the ground conditions may not be ideal at this site, it is typical of many agricultural fields in the wider Derbyshire coalfield area which commonly comprise of heavy clay based soils with poor natural drainage. There are parts of the site that have not been subject to previous coal mining and therefore its condition cannot be solely attributable to the standard of the previous restoration work. There is no claim from the applicant or evidence to suggest that improvement would be sufficient to enable the classification of the site to be raised to Grade 3b or above. The site is already in productive agricultural use and, in my view, there is no substantive restoration benefit in terms of agricultural land quality.

Public Rights of Way (PROW)

There are two PROW within the application site that would be affected by the proposal. It is clear from the representations that have been received that these routes are valued locally as a recreational resource. The ES states that it would be necessary to temporarily divert footpath 26 in the south of the site for a period of 15 months. Footpath 23, in the centre of the site, would remain open but with a crossing point installed over the haul road for a period of 15 to 18 months. No specific details of the crossing point are provided in the application. The footpaths would not be subject to restriction at the same time. They would both be reinstated to their original routes and to their current standard on completion of the development. The ES also assesses the visual impact of the development on users of the PROW network and the cumulative impacts with other development. It concludes that the impact on the PROW network would be negligible.

It is inevitable that the proposal would have an impact on these PROWs and on the people using them for a temporary period; however, they would under the applicant's proposals remain open and available for use. The safety of the users of these routes during operations at the site is a concern. The ES states that appropriate safety measures would be put in place but no specific details are provided in the application. I do not consider that these concerns would constitute grounds for refusal and am satisfied that the details of the crossing point and safety measures could potentially be dealt with by a planning condition or by legal agreement. In order to undertake the diversion works to footpath 26, the applicant would need to make an application under the Town and Country Planning Act 1990 and consent from the County Council or by the Planning Inspector granted. At the time of writing, no such application has been made to the County Council. Overall, I do not consider that the development would have an unacceptable impact upon the recreational value of the countryside. The visual impact of development on the users of these routes has already been considered above.

Socio-Economic

In determining proposals, the NPPF provides that LPAs should apply the presumption in favour of sustainable development. The NPPF defines

sustainable development as having environmental, social and economic dimensions.

The ES provides a social and economic assessment of the proposal. The baseline socio-economic conditions relevant to the area are assessed and the ES concludes that the general economic activity of the area is lower than the national average; there are pockets of high unemployment, one of which is in Clay Cross and not enough job vacancies.

The ES goes on to consider the potential employment and economic impacts of the proposal in terms of its direct, indirect and associated effects. For direct effects, it is stated that the proposal would generate 15 jobs over the 3 year period. The applicant would aim to secure as many local jobs as possible and considers it reasonable to assume, given the coal mining history of the Clay Cross area, that there would be people with the appropriate skills in the area. The proposal would also contribute to NEDDCs business rates and a community fund would be established to be used for community and environmental initiatives in the area. Indirect expenditure and employment is assessed as coming from wages to employees, spending on local goods and services, the employment of sub-contractors, hauliers and environmental consultants and energy use. Consideration is also given to the cumulative impact of the proposal with the adjacent development site.

The ES concludes the proposal would have a net positive economic impact; primarily from the coal that would be produced and the direct (including 15 temporary jobs) supply chain and induced effects. This, it is suggested, would offset any short term negative amenity impacts caused by the opencast scheme.

The NPPF requires significant weight be given to the beneficial economic impacts of development in planning decisions. There is also an unambiguous “economic” dimension in the evaluation of the extent to which a proposal constitutes sustainable development (along with social and environmental considerations). The application of this approach encapsulates the Government’s intended role for planning; taking a positive approach to facilitating economic growth in the national interest.

With reference to minerals decisions in planning, the NPPF states, “*Minerals are essential to support sustainable economic growth and our quality of life. It is important, therefore, that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation.*”

The Council recognises the importance of the minerals industry to the economy of the county and the wider country as a whole. Derbyshire has

been one of the most economically active mineral producing counties in England and planning decisions have consistently been made which support this role into the future.

Work on the joint Derby and Derbyshire Minerals Local Plan reflects this economic importance. The forward to the draft Plan consultation explicitly references this. It outlines the two council's ambitious agenda for economic growth and emphasises that the minerals industry will play a crucial part in the future economy.

However, to place weight on the economic benefits of a proposal it should be evident that the overall economic impact of the scheme is likely to be net positive in the context of local and specific micro-economic conditions. In other words, evidence that a scheme will create 15 direct or indirect jobs is not in itself a complete argument that the scheme will cause a net overall economic benefit to the local (or wider) economy. This means that if it is to have weight in a decision, the conjecture of net benefit should be capable of being falsifiable.

There are polarised views on the net economic impact of this proposal. This needs to be considered from several policy perspectives so as to gain a fuller picture of the issues.

While the existing DDMLP does not provide explicit guidance on evaluating the economic impact of opencast coal proposals, some of the provisions of the plan give an insight as to the factors considered to be material when balancing benefit against harm.

Policy MP27: Coal Extraction and Colliery Spoil Disposal indicates that when considering whether a proposal is acceptable, it can be relevant to consider the extent to which the proposal would adversely affect efforts to attract or retain investment in an area. The policy goes on to cite examples of specific benefits which can outweigh impacts. The policy indicates that the importance given to those benefits will scale according to how unlikely they could be achieved by any other means. In particular, it identifies the following; the extent to which the environment or communities of the area will benefit from the proposed working and subsequent reclamation, for example by the restoration of previously despoiled areas; by the stabilisation of unstable ground; by enhancing the landscape; or by contributing to biodiversity.

The policy states that particular importance will be given to proposals involving the reclamation of despoiled land, especially those that would enable former colliery sites to be released quickly for beneficial new uses. At the time of the DDMLP's adoption it was an established and important part of the Structure Plan strategy, and of other regeneration initiatives, that priority should be given to measures to improve the image of coalfield areas to encourage regeneration and to assist in alleviating economic and social deprivation. It

also identified that there is a benefit if the proposed extraction is necessary in advance of other approved permanent development in order to avoid the sterilisation of reserves of minerals.

Clearly, since the time of the policy formulation, many former colliery and other heavy industrial sites have been reclaimed by a variety of techniques, including those involving opencast coal extraction. Locally, the former Biwater Foundry, Market Street, Clay Cross was an opencast coal scheme which was granted planning permission in 2009 as it both passed the above DDMLP tests and specifically facilitated redevelopment permission approved by the NEDDC.

While these provisions are aimed at assessing benefits in the context of where a proposal is not environmentally acceptable, they also provide a way of considering the balance of implied or stated benefits against the concerns expressed by the many representations, including the fundamental objections of NEDDC.

It is the case that, while Clay Cross is no longer a visibly “former coalfield” area, the socio- economic conditions in the town are still a legacy of this former dominant industry.

A recent planning decision in Clay Cross was opposed by a range of parties because of an alleged negative net impact on the investment environment. This was for the construction of an energy recovery facility at Bridge Street, which this Authority resolved to approve (subject to Section 106 provisions) in April 2016. This was considered to have a net positive economic impact. The reasons behind this conclusion reflected a range of factors including design, employment, apprenticeship schemes/vocational training, off-site benefits (including a heat network) and a range of specifically tailored community gain.

The proposal under consideration here would clearly demonstrate some generic and place-specific benefits as articulated by the applicant. However, a proposal providing direct employment can also have an overall net negative socio-economic effect on a local area if it also results in a particularly significant reduction or displacement of economic activity in the area, which is directly attributable to the effects of the development in question. In this case the contradicting views about the overall balance of positive and negative factors is expressed by the NEDDC on the basis of prejudice to the overall regeneration of Clay Cross.

In addition to the strategic concerns of the NEDDC, there are very specific concerns expressed by a nearby developer. St Modwen Developments Ltd, as set out in the publicity section above, objects to the opencast proposal on a range of issues. St Modwen has outline permission for a major mixed use redevelopment scheme including 980 dwellings and a range of employment/service uses. It suggests that “*..redevelopment of the Biwater*

Site will act as a catalyst to regeneration” of Clay Cross and argue that the proposed opencast scheme “*directly opposite the Biwater site’s Derby Road frontage will have a negative impact upon the town and the marketability of the Biwater Site for development*”. It supports this concern by stating that Clay Cross is an extremely sensitive market and that “abnormal development” will have a disproportionate impact on promotion of investment.

The “catalyst” importance of the Biwater scheme is confirmed by NEDDC, and is reflected by its inclusion in both the emerging Local Plan and the Clay Cross Regeneration Framework.

To address this question there needs to be an examination of whether the concerns addressed by these third parties are justifiable and evidenced. As a general observation, during the consideration of mineral applications by the County Council and other planning authorities, it is sometimes the case that objections are presented on the basis of net harm from negative economic impact. These arguments are normally justified by the view that the proposal will undermine inward investment because of image or perceived impact on amenity, health or the environment. These arguments share a common driver, that minerals schemes will somehow be (to use a historic term) a “bad neighbour” in areas or at least perceived to be so.

In the case of this proposal, it can be seen that concerns in this regard have been strongly expressed in recent written representations in objection from the NEDDC and others. These representations express their belief that the proposal poses a high risk of undermining the deliverability of the regeneration aspirations for Clay Cross.

It cannot be disputed that (1) Clay Cross has a rationally justified emphasis for regeneration, and transformational improvements are required to realise this emphasis, (2) Clay Cross currently still represents an extremely difficult inward investment environment in terms of developer interest and viability, and, (3) Clay Cross has a heavy industrial past which is a facet of both issues (1) and (2). This overarching view of issues and the evidence presented by the NEDDC is supported by both the County Council’s Policy and Monitoring function and its Economic Regeneration Service.

The opposition to the proposal, and the evidence provided to support this view therefore needs to be weighed against the national policy presumption that, in generic terms, all minerals development is capable of generating economic benefits.

In this instance, the proposal is clearly different from the two examples of development in Clay Cross cite above. The economic arguments are framed around the material considerations which were used, in part, to justify these two decisions.

- The proposed opencast scheme will not avoid the sterilisation of a mineral resource. There is no development proposed on the site, nor has any allocation been sought in the current emerging North East Derbyshire local plan process.
- The scheme will not remove an area of dereliction or unstable land which is preventing any intended more productive economic use of the land that could not be achieved by other means.
- The off-site benefits are of a limited and short term basis only.
- The employment generated by the scheme will only be short term and, given the limited tonnage available at the site, is likely to be predominantly made up of a contractor-based workforce.

Against these identified absences of site-specific gain, there are only generic benefits accruing from the scheme, such as associated with a displacement of imported coal. The absence of an argument of avoiding the sterilisation is a significant issue, particularly in light of the current sensitivities of regeneration initiatives (both public and private sector) taking place in Clay Cross at the present time.

The NEDDC made substantive and evidenced objections against the nearby Bridge Street EfW facility. In that case, the concerns of the NEDDC were weighed against multi-faced and substantive benefits. Even in this case it was accepted that the evaluation was “more finely balanced than is typical” for a consideration of alleged negative economic impact.

From an objective evaluation of all of the above, it is concluded that the weight of evidence provided to support the assertion of negative economic impact at this point, in time by visual and perception impact, is so compelling in itself so as to justify a recommendation of refusal. This conclusion, because of the absence of any sterilisation argument, does not run counter to the NPPF advice “to secure their long-term conservation” of a mineral resource.

Cumulative Impacts

The importance of the cumulative effects of development is recognised in the NPPF. It states, at Paragraph 120, that *“to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.”* At Paragraph 144 of the NPPF, it states that *“When determining planning applications, local planning authorities should take into account cumulative effect of multiple impacts from individual sites/and or from a number of sites in a locality.”*

It is also recognised in the DDMLP. Although the specific concern of Policy MP4 is 'Interests of Acknowledged Environmental Importance', MP4 is also instructive with regard to the consideration of cumulative impacts in other situations. It states that one of the aspects for deciding whether a development was acceptable or not would be where it would result in an unacceptable cumulative impact on the environment of an area, either in relation to an individual proposal having regard to the collective effect of the different impacts, or in relation to the effects of a number of mineral developments occurring either concurrently or successively.

The applicant has provided an assessment of the cumulative impacts of the proposal in the ES. The applicant's assessment has regard to three areas of cumulative impact: a) successive effects, b) simultaneous effects from concurrent developments, and c) combined effects from the same development; it also considers the potential cumulative benefits of the proposal. There is no formal national methodology for assessment of cumulative impacts, however, the ES refers to a High Court Judgement by Mr Justice Brown concerning Long Moor opencast coal site in Leicestershire and to an Inspector's decision of 2009, on behalf of the Secretary of State, on an appeal against a refusal of a planning application for an opencast coal site near Telford, which provides some guidance on assessing the cumulative effects of this type of development. The methodology used in these cases has recently been used by this Authority in assessing several surface mining development proposals (for example Lodge House and George Farm) and it is considered appropriate in this case.

Successive Effects

The ES considers the impact of a succession of similar types of development in the locality and overtime. The ES provides a very general overview of historic coal mining in the Clay Cross area and at the site itself. The ES states that the last known opencast workings were on part of the application site and completed in around 1955. The ES also considers the more recent coal mining development at Biwaters that was completed in 2010. The ES concludes that, given the length of time that has lapsed since the last workings, no unacceptable successive effects would be likely to result from the proposal.

The ES also gives consideration to the most recent planning permissions granted by the County Council, those being at Lodge House near Smalley and the resolution to approve George Farm near Denby. Due to the distance between these sites and the application site, no adverse successive impacts are anticipated. The ES also considers the Avenue Coking Works located 2km's to the north of the site, which is stated as opening in 1956 and closing in 1992. The Avenue site is now being redeveloped as a mixed use development. Due to the gap in time of the operation of the coking works and the separation distance, the ES does not consider that there would be any adverse successive impacts.

The applicant, in my opinion, fails to adequately assess the successive cumulative impact of this proposal. It does not assess other similar and related developments, some of which are currently subject to ongoing reclamation and redevelopment, such as the Avenue and Biwaters sites and which would, in my view, be considered to be successive with the proposal and also potentially concurrent in some cases. The applicant's assessment of successive effects does not acknowledge other heavy industrial long term in Clay Cross. Clay Cross is a former heavy industrial and mining town. Whilst the coal mining sites may have gone, the industrial and heavy engineering legacy associated with mining is still present. For example, the Biwater foundry to the north of Clay Cross did not close until 2000, whilst this site was derelict for a time after closure it has more recently been subject to significant reclamation works (including areas where coal extraction has taken place) and is currently in the process of redevelopment.

It also does not take into account other coal mining sites in the vicinity of Clay Cross, the former Doe Hill and Morton/Mickley collieries to the south of Clay Cross and Grassmoor Colliery to the north-east, which has also recently been subject to significant remediation of the lagoons and ongoing restoration works. I also do not agree with the applicant's conclusions regarding the Avenue Works site. Whilst the coking works may have closed in 1992, this site has been subject to significant and ongoing demolition reclamation and redevelopment works during the last 10 years. Successive developments in an area can have a substantial impact on the landscape over a wide area as it takes time for these sites to mature and can impact on the amenity of the area over long periods of time. In my opinion there would potentially be adverse successive cumulative impacts associated with this proposal.

Simultaneous Effects from Concurrent Developments

The ES recognises the potential for simultaneous effects with the adjacent Biwaters site, the proposed EfW facility on Bridge Street and The Avenue site. With regard to the Biwaters site, the ES states that provided both sites adopt appropriate and rigorous mitigation measures, no unacceptable combined effects are likely to occur. Due to distance and intervening topography, the ES also considers that the proposal is unlikely to give rise to unacceptable impacts with the Avenue site. The potential EfW facility on Bridge Street is also considered. Members will recall that this was considered at the meeting of the Regulatory - Planning Committee on 11 April 2016 when members resolved to grant planning permission for this proposal. The issue of the planning permission is currently pending the completion of a Section 106 agreement. Due to separation distance and intervening industrial buildings the ES considers it unlikely that unacceptable cumulative effects would arise with the EfW facility. Overall, the ES concludes that whilst there is potential for minor simultaneous negative effects with other development, the effects are not likely to be significant and unlikely to make the proposal unacceptable.

The applicant's assessment on simultaneous cumulative effects does not specifically deal with any particular individual combined impacts such as noise, dust, landscape or visual impacts, however, these have been considered in other parts of the ES under specific topic areas. As previously considered, there is potential of adverse simultaneous combined effects from the proposal in relation to noise, dust, landscape and visual impacts.

The main simultaneous impact would be on the landscape of the area. The applicant's LVIA assessment accepts that moderate adverse landscape and visual impacts would be likely to result from this proposal cumulatively with the adjacent Biwaters development. Work on the first phase of the Biwaters development has now commenced and, if combined with the Hilltop proposal, I consider this would have an adverse cumulative impact for a number of residential properties off Derby Road and Brassington Lane, as well as users of Derby Road and the PROWs. Whilst the developments would take place over a limited period of time, it would take some time for the landscape to mature following completion of the developments.

There are properties and businesses that would be likely to experience noise and dust from both the Hilltop and Biwaters developments. Whilst the applicant's assessment concludes that the cumulative impacts of noise and dust with other developments are not likely to be significant, this appears to be reliant on all sites employing appropriate mitigation as required by their planning consents and also the timing of the developments which cannot be assured.

Combined Effects

The guidance in the NPPF advises LPAs to take into account the cumulative effect of multiple impacts from an individual site. The collection of a series of impacts that may be considered to be acceptable in themselves can lead to an unacceptable combined impact. In this instance the expression "cumulative impact" is to be understood to mean the full consequence of the overall combination of different types of impacts from the proposal.

The ES adopts the approach taken by the Planning Inspector in the Telford case for assessing combined environmental effects. The ES quotes from the Inspector's report where he notes "*For individually acceptable impacts to be elevated together to unacceptable impacts, they must have a synergistic effect.*" This is interpreted in the ES to mean that in order to assess the combined effects properly, it is necessary to consider whether some or all of the individually acceptable effects are so close to being unacceptable, that when combined together, the totality is unacceptable. The ES considers the potential significance of the individual environmental impacts and considers that the only environmental impact that has the potential to come close to the thresholds of acceptability is noise.

The ES considers whether any of the individual environmental areas could combine to give rise to unacceptable cumulative impacts and applies the four tests cited by Mr Justice Brown, which the ES quotes as being:

- “(1) even though each individual area of potential impact was not objectionable yet each such feature was so close to objectionability that, although none could be said to be individually objectionable, yet because each was nearly objectionable, the totality was cumulatively objectionable; or*
- (2) one, two, three or four of the particular features were close to being objectionable and that would be an important matter to take into account when looking at the totality; or*
- (3) one particular combination of two or three otherwise objectionable features could cause objectionability in their totality; or*
- (4) as was specifically addressed by the Interested Party and by the Inspector here, and found not to be the case, there could be some unusual feature or some unusual combination of features such as to render that combination objectionable when the individual feature was not...”*

It concludes that, following assessment of the four tests, there would be no objectionable combined negative effects from the proposal.

The ES also considers the cumulative impact of the positive benefits of the proposal and concludes that the proposal would bring about a number of positive effects, which individually and in combination would offset any negative impacts of the scheme. Further consideration of the benefits of the proposal is provided later in this report.

Firstly, I would disagree with the applicant’s assessment of potential significance of the individual environmental impacts and its conclusion that the only environmental impact that has the potential to come close to the thresholds of acceptability is noise. As has been considered above, the proposal would have unacceptable noise, landscape and visual impacts. The issue of dust and air quality is also a finely balanced one.

With regard to the applicant’s assessment of test 1, I disagree with its conclusions. As described above, noise is not the only environmental area that could make a contribution to cumulative harm and I do not agree that the landscape and visual impacts would be offset by the restoration benefits which as described earlier in the report, are considered to be very minor and not dependent on the opencast coal scheme. Noise and dust, in my view, are important matters and would, combined with other environmental impacts that are considered individually to be unacceptable, give rise to an unacceptable cumulative impact on the locality. Having come to the view that the proposal would not meet the test 1, I find that it would also not meet tests 2 and 3.

The applicant's assessment of test 4 is that there are not any unusual features for surface coal mining in this location or any unusual combination of features that would make it unacceptable. However, in considering this aspect, I would point out that for a surface coal mining proposal there are some particular site and location features that do contribute to unacceptable cumulative impact. As has previously been discussed above for an opencast coal mining operation, this site is particularly close to residential properties.

I am also of the view that the assessment of cumulative impacts should have a wider perspective. The Derbyshire coalfield has a lower threshold to further change, compared to some other areas due to the overall mining and industrial heritage. Clay Cross has experienced mining and heavy industrial activity (noise, dust, fumes visual intrusion, etc) on a large scale over a long period and this legacy is apparent in the level of dereliction and degradation found in the area. This is supported by the need for a regeneration scheme for the town. Clay Cross can therefore be regarded as being more sensitive than some other areas and any new adverse impacts would have a greater cumulative impact.

The collective impact on the location and the local community of each type of impact predicted to be caused by the proposal over its lifetime would be adverse to an unacceptable extent. In this case, the different types of impact accumulate to cause a degree of sustained harm to amenity which is unacceptable even though some of the types of impact would not necessarily be of such adversity as to be unacceptable in isolation. The combined effect of individual impacts generated from the development, particularly landscape and visual impact, noise and dust are considered to be more significant in combination, and so significant in combination as to render the proposed development unacceptable. I am also of view that it would have unacceptable successive cumulative impacts and a high potential for unacceptable simultaneous effects with other developments. The proposal is considered to be unacceptable in terms of its cumulative impacts and would not accord with Policy MP4 of the DDMLP or the NPPF in this respect.

Alternatives

The ES considers the alternatives to the proposed development which include the 'no development' scenario, the development of alternative sites and materials and site specific alternatives. The applicant is of the view that as there is a strong need for indigenous coal, the 'no development' scenario would put reliance on imports which has adverse environmental cost and does not accord with the principle of sustainable development and guidance in the NPPF. In light of this, the ES concludes the 'no development' scenario not to be a reasonable alternative.

The ES assesses alternative sites and materials, and makes reference to Policy MP28: Opencast Constraint Areas of the DDMLP and concludes that the application site is a suitable site as it is not located in an Opencast

Constraint Area and does not have any important environmental constraints or designations that would be a constraint to the development. The ES states that alternative materials for the generation of energy have been considered and states that there is a clear need for coal and that the NPPF confirms that coal is of local and national importance essential to meet the needs of society; on that basis coal is considered to be a suitable energy material.

The ES goes on to consider site specific alternatives that include site layout options, direction of working, access and transportation options, overburden storage, restoration and land use options and concludes that the submitted scheme is the preferred scheme in terms of environmental acceptability.

The assessment of alternatives is, in my opinion, weak as it is limited to simply the alternatives of not working the coal at this site, a statement by the applicant that the site is suitable and alternative ways of working the site have been considered. No specific alternative sites have been considered and the applicant has not provided any evidence as to why this site should be developed over any other in the coal field area.

The purpose of opencast constraint areas was to apply strict controls on opencast coal working in certain designated SLAs in order to protect their essential qualities. Constraint areas were for a particular reason relating to the very high quality/susceptibility of certain locations and should not be used to conclude a general level of acceptability elsewhere. However, such areas are not part of the NPPF and therefore little weight can be attributed to this policy and it is not relevant in the assessment of this proposal.

Other Considerations

Light Pollution

Artificial lighting on any new development may affect residential amenity and impact on ecological interests. The application does not provide any specific details of the site lighting which would be required for this proposal. However, the detail of the site lighting and suitable controls to limit the negative impacts of artificial lighting could be dealt with by a planning condition as has been recommended by the EHO.

Land Stability and Mine Entries

Mining and ground stability is considered within the geological and hydrological assessment report in the ES documents. The site has previously been worked for coal and there are seven recorded mine entries in the area. There is potential for unrecorded shallow mining features and voids to exist from the previous mining activities at the site. The ES states that the proposal would remove the remaining coal at the site and, following replacement of the overburden, the potential risk from such features would be eliminated. Ground stability assessment maps and data have been obtained by the applicant and it is stated that these confirm that the site is at low or very low risk from natural

ground instability hazards.

The site has a long history of agricultural use, with periods of mining activity. There is potential for contamination to be present from previous activity at the site which could be uncovered by the development. The use of plant and equipment would also introduce the risk of contamination from spillages. However, I am of view that the risk would be small and would be capable of being dealt with.

Impact on Services

There is electrical, gas and water service industry infrastructure within and adjacent to the application site as described earlier in this report. For the development to proceed it would be necessary for some of these services to be diverted. The applicant has not provided any specific details in the application but has supplied plans which suggest that the overhead lines would be diverted underground. It is understood that the applicant has had discussions with Severn Trent Water regarding the water mains and a potential diversion immediately to the east of the site along the A61. Yorkshire Water in its consultation response has raised concerns about the impact of the proposal on public sewers to the west of the site. The applicant, in its recent submission of further information, has indicated that this infrastructure would be unaffected by the proposal and an appropriate stand-off could be maintained and that there would be no increase in the working area of the site. The development would impact on the services within the site, however, I am satisfied that with the agreement of the relevant service providers, these services could be diverted where necessary and/or appropriate stand-offs provided. The works to divert services could potentially have local amenity impacts; however, I do not consider the impact on service infrastructure to be a significant issue in considering the environmental acceptability of the proposal.

Climate Change

Effective spatial planning is considered to be an important part of a successful response to climate change as it can influence the emission of greenhouse gases. Guidance within the NPPG states that LPA's "*should ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment. Planning can also help increase resilience to climate change impact through the location, mix and design of development.*"

Relevant climate change legislation includes the Climate Change Act 2008 which establishes a legally binding target to reduce the UK's greenhouse gas emissions by at least 80% in 2050 from 1990 levels. The Climate Change Act also requires the government to assess regularly the risks to the UK of the current and predicted impact of climate change; to set out its climate change adaptation objectives; and to set out its proposals and policies for meeting these objectives.

The NPPF states that *“planning plays a key role in helping to shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change and supporting the delivery of renewable and low carbon energy and associated infrastructure.”*

In 2014, the ‘Mining and Quarrying industry’ accounted for just under 4% of UK’s carbon dioxide emissions⁴. The proposal to develop a surface coal mining operation at this site would inevitably be a source of greenhouse gas emissions. Mineral development, particularly the processing of minerals, can produce significant greenhouse gas emissions but this will vary depending on the mineral type and how they are processed. It is also likely that vehicular emissions, from on site extraction processes and from the transport of the mineral to markets, would also be a significant factor.

Climate change can be mitigated by reducing emissions. For mineral development, locating sites where the distance that minerals would be transported is minimised can help to reduce emissions. Developments can also help to reduce emissions through the careful design, construction and operation of facilities, enabling energy efficient low carbon schemes for the winning and working minerals. The applicant has not provided any details in the application on how site design could minimise greenhouse gas emission and mitigate the impacts of climate change. The applicant has, however, indicated that the markets for the coal would potentially be in the east and west Midlands regions.

The combustion of coal for energy generation is a significant source of greenhouse gas emissions. The impact of the Large Combustion Plant Directive, which is part of the European Unions’ drive towards reducing greenhouse gas emissions, and the Government’s decarbonisation agenda, will affect the future demand for coal and its use in energy generation: further consideration of this issue is provided below.

Conclusions on the Environmental Acceptability

Having considered the environmental acceptability of the proposals, for the reasons set out above, I find that the proposal does not comply with policies MP1, MP3, MP4 of the DDMLP, policies GS6, NE1, NE7 and NE8 of the NEDLP, would have unacceptable landscape and visual impacts and unacceptable cumulative impacts, and would also have an unacceptable social and economic impact which would hinder the regeneration of Clay Cross. Therefore, I have concluded that the proposal does not comply with the environmental acceptability tests (parts A and B) of Policy MP27 of the DDMLP, or the specific criteria for coal in the NPPF at Paragraph 149, and could not be made acceptable by conditions. Consequentially, and having particular regard to Part C of Policy MP27 and Paragraph 149 of the NPPF, I have found it to be necessary to assess whether the benefits of the proposal would outweigh the unacceptable impacts.

Assessment of the Benefits of the Proposal

The applicant describes the proposed development as the creation of a surface coal mine to extract coal for commercial and domestic use, and the restoration of the site back to agriculture including ecological enhancement, and has summarised the benefits of the development as including direct employment opportunities, local and regional economic benefits, meeting the need for coal supply, flood alleviation, provision of a MUGA and related toddlers' park, improvement to allotment fencing, ecological and landscape enhancements and the provision of a significant new PROW. The flood alleviation, ecological, landscape and visual, land quality, employment and economic benefits have all been considered in detail in the assessment above.

A key issue for the assessment of benefits is whether they are ones that would be derived from the development itself and unlikely to be achieved by any other means. Policy MP27 of the DDMLP states that "*When considering whether the unacceptable adverse environmental impact of a proposal is outweighed by the benefits that the development would provide, importance will be given to those benefits that would be unlikely to be achieved by any other means.*"

The proposed landscape and visual, agricultural land quality and ecological benefits as described above are considered to be very minor and could potentially be delivered through other means, for example through an Environmental Stewardship Scheme. There would be some visual benefit through the proposed planting to screen views of the Derby Road Industrial Estate and potentially some consequential flood alleviation benefit from the works proposed to Watercourse 2. The proposal would also have some economic benefit; this aspect has been considered in some detail above, and is balanced against the proposals potential for net negative socio-economic effect.

The applicant states that a further benefit of the proposal would be the improvement of public access and the facilitation of linkages through the provision of land within and adjacent to the application site to facilitate a future multi-user trail that would link the new Egstow Park and the existing Holmgate and Kenning Park. Land would be made available by the landowner following the completion of restoration in perpetuity that could then be potentially developed in the future by a third party. The applicant is not proposing to carry out any physical works to provide a new PROW. A substantial proportion of the proposed route is located on land outside the extraction area and would not be directly affected by the proposal. The delivery of a new PROW would be dependent on a third party, such as the County Council, bringing forward such a proposal. The commitment to leave land available would be of some benefit to facilitate such a development, if there was an aspiration to provide a new route. However, this could potentially be achieved without the

development taking place. I do not therefore consider this warrants any significant weight in considering the overall benefits of the proposal.

The applicant has set out a number of off-site benefits for which the applicant indicates a preference for a MUGA and toddler play area, and allotment fencing to be provided for through a community fund and secured by a legal agreement. No firm location has been identified for any MUGA and toddlers' park that the applicant would wish to fund through a "community fund". The applicant suggested an allocation on land held by CCPC but the Parish Council has not been willing to pursue this. In any case, it does not appear that any such facility that might result from the funding would bring a specific off-site benefit that would mitigate or offset any of the negative impacts or consequences of the proposed development. Therefore, due to not having any definite connection with the proposed development, this funding is not to be regarded as a benefit which is relevant to the determination of the application. The allotment fencing which the applicant also proposes to fund in this way similarly appears to lack any definite connection with the proposed development.

Supply/Need for Coal

The main direct benefit of the proposal appears to be the delivery of coal. Notwithstanding its policy position on coal mining developments, the NPPF's approach is to support the provision of a steady supply of all important minerals within the Plan area. The NPPF does not expect MPAs to make provision for a specific volume of coal (or other forms of energy mineral); these decisions should be left to the market.

Policy MP2 of the DDMLP sets out the factors to be taken into account in determining whether the need for the mineral is sufficient to outweigh any adverse environmental effects likely to be caused by the proposal. Policy MP2 predates the NPPF but, as a list of criteria, it is considered to be consistent with the NPPF, which provides more current guidance.

The ES considers the need for coal and makes the following observations:

- that as the country moves towards 'low carbon' energy generation coal will continue to be an important part of the UK's energy mix;
- coal is reliable and flexible, and able to provide a swift response to peaks in the UK's energy consumption;
- the production of indigenous coal reduces the UK's reliance on coal imports and helps to minimise issues relating to security of energy supply;
- the Government's indicated phasing out of coal generating electricity is planned over a reasonably long period of time (approximately 2030) and in the meantime, there will be demand for coal to ensure electricity generation; and

- The potential timescale for phasing out indigenous coal production is well beyond the timescales of the proposed development.

The applicant acknowledges that the amount of coal to be supplied from the site may not make a significant contribution to overall electricity generation in the UK but considers this to be the case for even the largest of sites.

Together, individual coal sites make an important and significant contribution, reducing the amount of imported coal, minimising transportation and ensuring electricity generation.

The applicant believes that there is a market for the coal and has indicated that it would be utilised in both commercial and domestic markets. The applicant indicates that some of the coal extracted from the site would potentially be used for electricity generation at power stations located at Ratcliffe-on-Soar, Cottam and West Burton; Drax power station may also be a potential consumer. The applicant states that the high calorific value of coal at the site makes it particularly suitable for blending with lower quality imported coal. The domestic markets would potentially include sale of the coal to various fuel merchants throughout the Midlands region and sale to the steam railway sector.

The ES makes reference to the NPPF confirming that coal is of local and national importance, essential to meeting the needs of society and that great weight should be attached to the benefits of mineral extraction including the economy. The applicant considers that the proposal would make a positive contribution to the local economy and would provide a range of community benefits. The coal extraction would contribute to meeting a local and national need for coal, and that the significant levels of coal imports into the UK demonstrate a strong national need for indigenous coal production. The applicant considers that the proposal generally complies with Policy MP2 of the DDMLP. The ES concludes that there remains a strong need for indigenous coal production to ensure continued electricity generation.

The applicant does not address the issue of any particular need there might be for the coal that would come from this site relative to any other site in the coalfield area and its analysis of need is confined to the general need for coal for power generation.

The Government's position on national energy policy is changing and evolving quickly in comparison to the situation in the last century. Indigenous coal, with its abundant reserves, was previously regarded as a very important element of the energy infrastructure of the UK. Whilst coal is still an important element, it is now one of many options for energy production. Of the coal that we do use, the proportion obtained from outside the UK has risen significantly in the years since the large-scale colliery closures of the 1980s. Issues about how we will produce energy in the future and how reliant on external sources of fuel we will be to produce that energy, are matters of increasing importance. The

Government has identified two energy challenges which bring into question the role that coal will play:

- Tackling climate change by reducing carbon dioxide emissions both within the UK and abroad as part of wider EU initiatives.
- Ensuring secure, clean and affordable energy as we become increasingly dependent on imported fuels.

The Government recognises that fossil fuel generating stations will continue to play a vital role in improving reliable electricity supplies and a secure and diverse energy mix as the UK makes the transition towards a decarbonised society. Coal is seen as a flexible and reliable source of electricity generation and, in winter periods of peak demand, can provide a significant amount of our generating needs. However, coal is a relatively high-carbon source of electricity, with carbon emissions around twice that of gas per unit of electricity generated.

The Government has therefore committed to preventing any new unabated coal generating stations being built in the UK, as set out in the NPSs. In addition, the Government has also introduced measures to limit coal plant emissions under the requirements of EU air quality Directives. In 2013, the Government also introduced the domestic Carbon Price Floor, which is a regulatory/taxation policy designed to provide incentive to invest in low-carbon power generation and is related to emissions. The Industrial Emissions Directive for large combustion plants already in existence came into effect on 1 January 2016. The Directive tightens emission limits on fossil fuel power stations and consequently, it is expected that there will be few coal power stations in operation beyond the early 2020s. The use of coal for power generation in the longer term will therefore be likely to be dependent on the success of carbon capture and storage.

The most recent Government thinking on energy is set out in the Secretary of State for Energy and Climate Change WMS in November 2015, which reaffirms the Government's commitment to reduce emissions and states that one of greatest and most cost effective contributions towards this goal would be to replace coal fired power stations with gas.

Energy Trends

The Digest of United Kingdom Energy Statistics (DUKES) is produced annually by the Department for Business, Energy and Industrial Strategy and provides data on UK energy production and use. The July 2016 publication covers the year 2015. The publication reports that in 2015, coal output decreased to record low levels. There was a further switch in the main sources of electricity generation away from the fossil fuel of coal to more low carbon generation. Generation from coal fell by 25%, as a number of plants closed or switched to burning biomass; gas fell marginally by 0.9%; nuclear

output rose by 10% with renewables up by 29%. The overall renewables share of generation increased to a record 25% share of generation.

The figures for 2015 show that coal production decreased by 26% from 2014 to an all-time low of 9 million tonnes, following the closure of a number of mines/companies and some other mines producing less coal as they come towards the end of production.

The total demand for coal decreased from 48 million tonnes in 2014 to 37 million tonnes in 2015, with a 24% decrease in the use of coal for electricity generation. In 2015, UK imports were 24 million tonnes (the lowest value for 15 years), a decrease of 43% on 2014 due to lower demand from generators.

Whilst the figures for 2016 as a whole are not currently available, Energy Trends and Energy Prices are produced on a quarterly basis by the Department of Energy and Climate Change (DECC). The relevant key points from the December 2016 publication are:

- of electricity generated in the third quarter of 2016, gas accounted for 43.6%, up from 34.8% in the third quarter of 2015, whilst coal accounted for 3.6%, down from 16.7% in the third quarter of 2015. Nuclear generation accounted for 25.0% of total electricity generated in the third quarter of 2016, an increase from the 21.7% share in the third quarter of 2015;
- overall UK coal production in the third quarter of 2016 was down 28% (-0.4 million tonnes) compared with the third quarter of 2015. This was mainly due to the last large deep mine Kellingley closing in December 2015. Deep-mined mine output fell to a new record low, down 99%. Surface mining output rose by 1.8%;
- coal imports fell 56% (2.2 million tonnes) on levels shown in the third quarter of 2015, as demand fell, especially for use by electricity generators;
- the demand for coal by electricity generators in the third quarter of 2016 fell to a new record low of 1.2 million tonnes and was 76% (-3.8 million tonnes) lower than demand in the third quarter of 2015 due to a fall in coal generation capacity, including the closures of Ferrybridge C and Longannet in March 2016 and the conversion of a third unit at Drax from coal to high-range co-firing (85% to <100% biomass) in July 2015; and
- total stock levels were down 45% (-7.6 million tonnes) to 9.2 million tonnes (a new record low) compared to a year earlier. This was due to generators using more coal stocks for electricity generation.

What is clear from the statistics above is that there has been a significant fall in the demand for coal for electricity generation between 2014 and 2016. The information contained within the DUKES publication suggests that there has

been a downwards trend in UK coal production and consumption since around 2011.

Conclusions of the assessment of benefits

Having considered the benefits that would stem from the proposal, for the reasons set out above, they would, in my view, be very modest and no weight can be placed on the unrelated off-site benefits when considering the overall acceptability of this proposal.

The main benefit to stem from the proposal would be the supply of coal. The amount of energy produced from coal is in decline and this has been the trend for a number of years; in line with the Government's decarbonisation and energy reform agenda. The Government continues to see an important role for coal as the Country makes the transition to a low carbon energy mix but unabated coal is not considered to be sustainable. In the short term, I accept that in the short term there is a general need for coal for use in the generation of electricity and would not dispute that the coal from this site could help fulfil that need. The coal would be from an indigenous source and would therefore also reduce reliance on imports. In the context of the local and national need for coal, the amount to be produced by this proposal is very small. Should all of the 175,000 tonnes proposed to be extracted be used in energy generation, this would equate to approximately 0.6% of the total amount of coal used in electricity generators in 2015 (29 million tonnes). The supply of coal from the site would be of some national benefit but it is considered to be very modest in the overall balance and therefore limits the benefit when set against the scale of adverse environmental, economic and social impacts.

I find therefore, that in accordance with the NPPF, the presumption against proposals for opencast mining of coal applies in this case. The national, local or community benefits would not outweigh the environmental, economic and social impacts to justify the grant of planning permission. The proposal would not represent sustainable development in the context of the NPPF. I also find that the proposal conflicts with Policy MP27 of the DDMLP in this respect.

Other Considerations

Indimmo representation

Indimmo has raised the issue that no agreement has been made with it for use of its land for access to the site. This is a matter to be dealt with by the applicant and the landowner accordingly, and would need to be resolved before any planning obligation secured under Section 106 of the Town and Planning Act 1990 as referred to below.

Legal agreement

In the event that the Planning Inspector is minded to grant planning permission for the proposal, a legal agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 should require the establishment of a Site Liaison Committee, seek to secure the land put

forward for any future proposals for a greenway, a routing agreement for HGVs entering and leaving the site, the provision of further information to Network Rail and a restoration bond. In considering the applicant's offer, the Council would also welcome its inclusion within the same legal agreement although, for the reasons stated above, this is not to be regarded as a material consideration.

Restoration Bond

There have been problems in Scotland regarding the restoration of opencast coal sites and the concerns raised by residents are understandable. In addition, recent announcements regarding other surface mine companies are a cause for further concern. Surface coal mines elsewhere have been required to be accompanied by financial bonds or deposits to guarantee funding for restoration. The applicant company is principally a contaminated land remediation contractor but has some experience of opencast coal mining and has previously worked and restored a site within the County.

The NPPG provides guidance on financial guarantees and considers that a financial guarantee to cover restoration and aftercare costs will normally only be justified in exceptional cases. Having taken into account the Government's energy reform agenda, the current and likely future demand for coal, the concerns of local residents and the likely concerns of members, and in light of the current sensitivities of regeneration initiatives in Clay Cross, I consider it be reasonable before granting any permission to require a restoration guarantee on this occasion. The applicant has been asked and has agreed to provide a restoration guarantee. The ability and commitment of the intended operator to operate and reclaim the site in accordance with the agreed scheme have been taken into account.

Conclusion

Having considered the environmental acceptability of this proposal, I am of the opinion that the extraction of coal from the site would result in significant adverse environmental impacts. The proposal would have unacceptable adverse landscape impacts of substantial significance, affecting the character and appearance of the site and its immediate area throughout the operational life of the development. In considering the close proximity of the site to residential areas, the development would also be visually intrusive. Over a longer period, following restoration, these impacts would reduce as the site recovers and the new landscape and habitat develop. However, it would take many years for the site to establish to the extent that this would be the case; the scheme would only be reinstating what was lost and there is no apparent overall land quality or landscape improvement or benefits.

There are many residential properties situated very close to the site and at these distances, it is inevitable that the occupiers would experience some disturbance from the site operations. The conclusions of the applicant's noise assessment resolves that the proposal would be at the very limits of

environmental acceptability in terms of noise impact, however, I am of the view that the impact of noise would be more harmful than the applicant's assessment anticipates and to an unacceptable extent. Considering the separation distance involved to some residential properties, dust is also likely to be an issue at certain times. It is disappointing that the ES, in relation to water (including further information received from the applicant), has not delivered a fuller and more detailed assessment for impacts on the water environment. It is also disappointing that certain investigation relating to water is not expected to be carried out before any permission is granted (as advised by consultees, any permission is expected to include conditions in this respect). However, taking into consideration the relevant assessment in the ES and the various comments from consultees, I do not find the development to be unacceptable with regard to the water environment.

There would potentially be adverse cumulative impacts associated with this proposal. Clay Cross and its surrounding area has a long history of mining and heavy industry, the remediation and redevelopment of large areas of land associated with previous mining and industry is still ongoing in the area, the proposal would be successive and, in some cases, concurrent with other development. There would be a likely simultaneous impact on the landscape of the area with the adjacent Biwaters development, as well as simultaneous amenity impacts such as dust and noise. The combined effect of the individual impacts generated from the development, particularly landscape and visual impact, noise and dust are considered to be more significant in combination and the proposal would have a significant adverse combined effect.

The proposal would provide some economic and social benefits, through the creation of direct employment, supply chain and indirect expenditure. However, overall due to the potential impact it may have other economic activity in the area and on the regeneration aspirations for Clay Cross, there is a case that the proposal would have a negative economic impact.

The proposal would have unacceptable environmental, social and economic impacts; the test, as set out in the NPPF and the DDMLP, therefore rests with whether the benefits of the proposal are significant enough to outweigh those impacts. The benefits which would stem directly from the proposal are considered to be very minor. The off-site recreational benefits proposed to be delivered through a community fund are not a material consideration when considering this test. The main benefit of the proposal would be the supply of coal and I accept that there is a national, although diminishing, demand for coal to meet energy needs. The contribution that the coal from this site would make towards meeting this demand is very small. In this case, I do not consider that the benefit from the supply of coal would outweigh the likely significant and adverse impacts of the development to justify the grant of planning permission.

Taking into account the parameters for assessing the impacts of this type of development, together with the emphasis of the NPPF on sustainable development, I consider that the significant effects of the development would be demonstrably unacceptable and, therefore, I recommend that the Planning Inspector be informed that the proposal is unacceptable and planning permission should be refused as detailed in the Officer's Recommendation below.

(3) **Financial Considerations** The correct fee of £44, 752 has been received.

(4) **Legal Considerations** This is an application submitted under Part III of the Town and Country Planning Act 1990 which fell to this Authority to determine as the Mineral Planning Authority, but is now for determination by the Secretary of State, since an appeal has been made under Section 78 of the Act.

I do not consider that there would be any disproportionate impact on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 4.2482.6
Application documents dated 25 January 2016, and additional received 22 February, 16 March, 25 April, 28 July and 16 December 2016, from Provectus Remediation Limited.

Letters and e-mail correspondence from:

North East Derbyshire District Council dated 28 April, 7 September and 1 November 2016.

Leader of the North East Derbyshire District Council dated 16 May 2016.

The Coal Authority dated 11 February and 11 August 2016 and 17 February 2017.

The Environment Agency dated 27 January and 3 August 2016 and 13 February 2017.

Severn Trent Water dated 17 October 2016.

Yorkshire Water dated 27 September 2017.

Derbyshire Wildlife Trust dated 28 July 2015 and 4 March 2016.

Natural England dated 7 November 2014, 16 February and 22 August 2016.

Historic England dated 8 February and 10 August 2016 and 15 February 2017.

Public Health England 18 June 2015 and 12 February 2016 and 16 February 2017.

Network Rail dated 3 and 16 February, 1 July and 6 September 2016.

National Planning Casework Unit dated 17 February 2016.

Clay Cross Parish Council received 24 February and 6 September 2016.

Tupton Parish Council dated 8 February 2016.

Wingerworth Parish Council dated 12 November 2014.

The Rights of Way Officer dated 16 October 2014, 16 June and 5 November 2015.

The Highway Authority dated 15 February and 12 May 2016.

Lead Local Flood Authority dated 6 April, 11 October and 30 November 2016.

The Environmental Health Officer dated 18 March and 3 November 2016 and 14 February 2017.

National Grid dated 25 February 2016.

Councillor Gillott dated 15 December 2014.

Letters of representation – various dates.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves to **authorise** the Strategic Director – Economy, Transport and Communities, to arrange for appeal representations to be made on behalf of the Council against a grant of permission for the development proposed under the application on behalf of Provectus Remediation Limited submitted on 25 January 2016 on the basis of the following reasons.

- 1) The proposed development is considered to be unacceptable due to the impact noise generated from the development would have on amenity in the locality of the development. The proposed development would have a significant and adverse noise impact on the amenity of the occupiers of residential properties in the locality. It is therefore considered to be contrary to the requirements of policies MP1, MP3 and MP27 of the Derby and Derbyshire Minerals Local Plan and paragraphs 109,120, 123 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.
- 2) The proposed development is considered to be unacceptable due to the impacts it would have on the local landscape character. The proposed development would have an adverse impact on it of substantial significance for the timescale of the operational site and for the subsequent timescale from the restoration of the site until a restored landscape matures; thereby affecting the character and appearance of the site and its immediate area. It is therefore considered to be contrary to the requirements of policies MP1, MP3, MP4 and MP27 of the Derby and Derbyshire Minerals Local Plan, policies GS1, GS6, NE1, NE7 and NE8 of the North East Derbyshire Local Plan and paragraphs 109 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.

- 3) The proposed development is considered to be unacceptable due to the impact it would have on visual amenity in the locality of the development. The proposed development would have a significant and substantial adverse effect on the visual amenity of the locality for the timescale of the operational site. It is therefore considered to be contrary to the requirements of policies MP1, MP3 and MP27 of the DDMLP and Paragraph 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.
- 4) The proposed development is considered to be unacceptable due to the cumulative impact the local community would experience from its impacts on visual amenity and local landscape character, and its noise and dust emissions. It is therefore considered to be contrary to the requirements of Policy MP4 of the North East Derbyshire Local Plan and paragraphs 144 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.
- 5) The proposed development is considered to be unacceptable due to the negative impact it could have on the progress of economic regeneration for Clay Cross. It is therefore considered to be contrary to Paragraph 19 of the National Planning Policy Framework, failing to represent sustainable development in principle.

Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015

The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article.

The applicant had engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required to accompany any forthcoming application.

The Authority has kept the applicant up-to-date with the progress of the application and has forwarded to the applicant consultation responses and representations where necessary requesting additional information in order to clarify the form of the development. The Authority has facilitated meetings to seek resolution to outstanding issues about providing clarity when further information has been requested.

Signed.....Date.....

Mike Ashworth
Strategic Director – Economy, Transport and Communities

References

¹ Vallack, H.W. & Shillito, D.E. (1998). 'Suggested guidelines for deposited ambient dust'. *Atmospheric Environment* **32**, 2737-2744pp

² Derbyshire County Council (2013). Technical Support Document 1 Areas of Multiple Environmental Sensitivity. Available at: <http://www.derbyshire.gov.uk/environment/conservation/landscapecharacter/default.asp> LC of D DCC 2014. Accessed 27 February 2017.

³ Department of Energy and Climate Change (2016). Energy Trends December 2016. Available at: <https://www.gov.uk/government/statistics/energy-trends-december-2016>. Accessed 27 February 2017.

⁴ Office of National Statistics (2016). 'UK Environmental Accounts: 2016'. Available at: <https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/ukenvironmentalaccounts/2016>. Accessed 27 February 2017.