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03. 12. 2025

Dear Climate Change, Environment, and Infrastructure Committee,

We write to you in the hope that the CCEIC will, as a committee, request the Welsh Government calls in the application to reduce the agreed restoration plan at the Ffos-y-fran Land Reclamation Scheme.

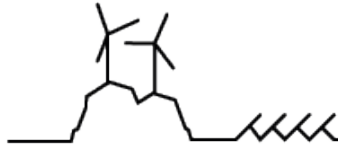
Summary

As the full name of the project indicates, this was a scheme to restore to a high standard the area of land, labelled as derelict at the time, through opencast coal mining. Proper restoration is therefore the scheme's central purpose, rather than an add-on. Yet, despite it being the central purpose of the project, the restoration has suffered unjustifiable delay (the mining company is actively in breach of planning conditions requiring the land to be fully restored by 6 December 2024). Some of this delay was caused by the illegal coal mining of some 640,000 tonnes of coal beyond the end of planning permission in September 2022, enlarging the void and adding to the coal tips. Merthyr (South Wales) Ltd's (MSWL) own public accounts indicate coal was sold at record-breaking prices. MSWL finally agreed with Merthyr Tydfil County Borough Council to stop mining by November 2023 – but only because Port Talbot steelworks ended its contract with the mine (as expressed in Ministerial Advice in July 2023) and after Coal Action Network and Good Law Project mounted a judicial review against inaction by the Welsh Government and Council.

Weaponising restoration

MSWL has profited from its flagrant disregard for planning conditions with total impunity from any Welsh public authority to date. In contrast, when the Mining Remediation Authority took enforcement action against MSWL for mining outside its licenced area, MSWL quickly complied. The difference is that the huge restoration cost can be held as the sword of Damocles over the heads of the Council and Welsh Government, fearing they may have to fund that restoration should MSWL go into administration – as outlined in the Ministerial advice (July 2023).

This appears to have created a chilling effect on enforcement action that could have prevented over 2 million tonnes of CO2 from mining continuing at the site – as revealed by internal communications between the Planning Officer for the application and the Council's solicitor in July 2023: "Finally, there is the real risk that a stop notice would result in the abandonment of the mine given that the approved restoration scheme is not deliverable. This approach may also antagonise the developer and undermine the negotiations to date towards a revised restoration strategy...[own emphasis]" This also sets a deeply alarming precedent; just as MSWL cites the precedent set by Celtic Energy Ltd's own avoidance of restoration costs across four coal mines, we know that corporations are watching and learning from this case, undermining planning control and the polluter pays' principle.



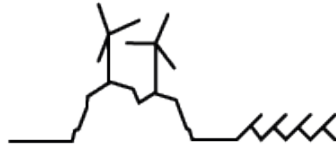
Forensic financial review

However, advice that Coal Action Network has received from internationally renowned forensic accountants C. Lewis & Company suggests that the risk of MSWL being able to legally cut and run with the £91.2 million ring-fenced restoration funds has been substantively exaggerated. A key conclusion that the review reaches is that the most viable way for MSWL to end up in a position where they can withdraw in dividends more of the restoration funds is by convincing the Council to approve a lower-cost restoration scheme. That is exactly what the reduced restoration application before the Council attempts. Agreeing that less can be spent (by approving this application or any other application for an alternative lower-cost scheme) is the greatest risk to the availability of funds for a safe and thorough restoration of the land. This in itself would allow the company to legitimately withdraw as dividends the substantial funds set aside for the restoration. Unless this happens, the company is likely financially 'locked in' to fulfilling its obligations to restore the site fully based on the approved scheme and based on the most recent accounts, has the means to do so. If these funds were dispensed in dividends or for other purposes, that would likely represent unlawful dividends or wrongful trading, both of which can engender severe penalties, including leaving the directors personally liable for the Group's liabilities. I have attached separately the full analysis by C. Lewis & Company.

Council control and conduct

Unfortunately, the Council has seemingly failed to control any aspect of MSWL's activities, including: mining far beyond its planning permission, switching off its pumps causing the void to flood, the immediate loss of almost all jobs on the site, to secure restoration by 06 December 2024, and preventing it operating an unauthorised motocross track (beyond permitted development rights) atop the largest coal tip. But perhaps most centrally, despite years of challenges from groups and individuals, key Council staff have accepted and repeated MSWL's claims that it is impractical to hold the company to fund the agreed restoration scheme, despite company accounts clearly indicating the very opposite to be true e.g. "...the approved restoration scheme is not deliverable" (as referenced earlier). Although the Council repeatedly failed to disclose on what basis it had been asserting this since at least 2023, it was made clear by the Council's request for evidence from MSWL in June 2025 that its assertion over a period of years had been contrary to the evidence available to it. A lack of finances was the primary justification for MSWL not to have funded and finished restoration by the required deadline, supposedly requiring more time to present a reduced proposal. Despite being the justification for breaching another planning condition, the Council delayed requesting this evidence of deficient finances until over half a year after the site should have been reopened to Commoners and the 58,000 residents of Merthyr Tydfil. This inexplicable conduct by the Council is concerning and warrants further investigation. It has already resulted in serious consequences for Commoners, residents, planning control across Wales, and nature recovery, and constitute the grounds to take the process out of its hands.

In its response (July 2025) to the Council's eventual request for evidence of its finances, MSWL suddenly claimed this is not a material planning issue. This is despite frequent referring to insufficient finances in its main Ecological Impact Assessment (March 2025) as a central justification



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to leave behind a flooded mining void, an exposed coal-face sheer cliff-face, and three colossal coal tips dominating the skyline:

- “By amending Option 2 to retain the water body, the final restoration plan represents a more financially sustainable and environmentally conscious approach...
- balancing the demands of ecological restoration with community needs and financial realities.
- These changes represented a pragmatic approach to restoration, one that sought to maximise ecological and social gains within the limited budget.
- ...be funded by the proceeds held in the ESCROW account [suggesting it will not fund more than the £15 million held by the Council].”
- “As the Council is fully aware, there are insufficient funds within the Escrow and restoration fund to allow for the full and successful implementation of the current restoration strategy for the site.” – Planning Statement to extend the site (P/22/0237), 2002

Conclusion

Restoration of the land at Ffos-y-fran was the driving force for permitting the opencast coal mine. The Council’s belief that MSWL cannot or will not fund the agreed restoration has guided its approach towards MSWL, including its breaches of planning control. The financial burden of the restoration scheme created a chilling effect on enforcement action by the Council, perhaps extending to the Welsh Government. It materialised that there was no evidence basis for this approach, which had been highlighted by third parties. The forensic financial assessment suggests that funding does not present a barrier to implementing the full approved restoration scheme. The failures outlined in this letter, and the conclusions reached within the forensic financial assessment, will hopefully lead to the CCEIC adding itself to the list of parties requesting that the Welsh Government call in MSWL’s application to reduce the restoration by an order of tens of millions. Failing to do this will make a mockery of the Wellbeing of Future Generations Act, the Disused Mine and Quarry Tips (Wales) Act 2025, the Environment Bill, and Planning Policy Wales.

**NOTE ON THE DISCLOSURE OF MINE RESTORATION PROVISIONS
IN THE ACCOUNTS OF MERTHYR (SOUTH WALES) LIMITED**

10 NOVEMBER 2025



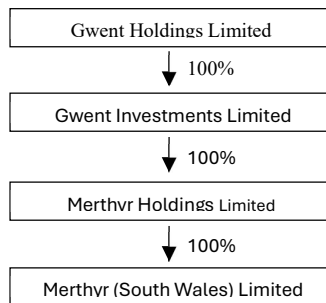
C. Lewis & Company
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Introduction

- 1.1 I am Brendan Cashman, a Director with C Lewis & Company. I am a Fellow of the Institute of Chartered Accountants in England and Wales and A Certified Fraud Examiner.
- 1.2 I am instructed by Richard Buxton Solicitors to provide a note concerning the Ffos y Fran mine. In particular I am instructed to consider the disclosure of mine restoration provisions and the availability of cash to fund said provisions in the financial statements of Merthyr (South Wales) Limited and other related companies.

Group Structure

- 1.3 The relevant group companies are as follows, with each wholly owning the entity below it as follows:



- 1.4 Gwent Holdings Limited is in turn wholly owned by Mrs Jane Helen Louise Lewis.
- 1.5 Another relevant related company is Geraint Morgan Legacy Limited, which owns the land Ffos y Fran operates from. It is wholly owned by David Lewis.

Reporting requirements for mine restoration provisions

- 1.6 It is typical in the UK for planning permission to be granted for mines contingent on the owners/operators restoring the site once the mining license expires, at the expense of the owners/operators.
- 1.7 As security, it is also typical that in order to enforce site restoration, the relevant council will require the mine owner/operator to deposit an amount of money in an escrow account, that will be forfeited should the restoration obligations not be discharged.
- 1.8 Under UK GAAP, mining companies are required to account for these anticipated restoration costs, using the preparer of the financial statements’ “best estimate” of what it would cost to “rationally pay to settle the obligation at the end of the reporting period”.
- 1.9 Each year, the best estimate must be adjusted so as reflect a current estimate at the reporting date: note this need not be a professional valuation of the scheme, but merely the preparer’s best estimate.
- 1.10 In practise, creating a provision in the financial statements means “setting aside” an amount of profits each year over the length of the mining license, precisely such that when the obligation must be met in the future there are available profits with which to do so.

Requirements to pay a dividend in the UK

- 1.11 In general, there is a difference between the cash generated by a company and the profits generated by a company, and a company can only pay dividends out of profits that it has generated. This means there are situations where a company can be sitting on lots of cash, but can struggle to get the cash out of the company and into the hands of its shareholders.
- 1.12 Broadly speaking, this is the situation MSWL is in: its business has been very cash-generative to this point, but because it has a legal requirement to set some of that aside to restore the site, it has not been as profitable in accounting terms.
- 1.13 To be more precise, whether a UK company can or cannot pay a dividend (i.e. distribute profits to its shareholders) is governed by the Companies Act 2006.
- 1.14 Specifically, section 830 states:
- “830 Distributions to be made only out of profits available for the purpose*
- (1) A company may only make a distribution out of profits available for the purpose.*
- (2) A company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made...”*
- 1.15 A dividend that is paid without having sufficient profits/reserves to do so is called an unlawful dividend. The penalties for making an unlawful dividend can be severe and can result in personal liability for the directors.

Observations from financial statements

- 1.16 Each of the companies in the group prepares its financial statements to 31 December, meaning that accounts are due at Companies House by 30 September the following year; each of the group companies has not yet filed accounts for the year ended 2024. This means that at time of writing, the latest publicly available financial information is to 31 December 2023.

Merthyr (South Wales) Limited

- 1.17 The (audited) financial statements of MSWL include, inter alia, the following at 31 December 2023:
- Amounts due from parent undertakings of £94,937,629.
 - Cash at bank and in hand of £1,168,958.
 - Cash funds held by LPAs as part of its s106 commitments of £15,413,773.
 - Operating provisions relating to restoration costs of £91,173,578.
 - Profit and loss reserves of £4,295,754.
- 1.18 The financial statements also provide the following narrative description of the operating provision:
- “The provision relates to the costs of returning land disturbed during mining activities including aftercare costs...”*



1.19 As noted in the “Risk management” section:

“Full account has been taken for funding the restoration obligation in the future costs and cash flows.”

1.20 In accounting terms, position appears to be that even if MSWL now has to pay the full restoration costs of £91m, they would have profits of £4m left over. If somehow it did not have to pay these restoration costs, there would be profits of £95m left over.

1.21 Note that MSWL does not have the cash itself to fund the restoration costs: this is because substantially all of the lifetime profits from the mine have been loaned to the ultimate parent company, Gwent Holdings Limited.

Other Group Companies

1.22 The cash generated from operating Ffos y Fran is still held in the Group, and can be seen in the financial statements of Gwent Holdings Limited, which has cash at bank and in hand at December 2023 of £118,270,182 (and a matching amount due to group undertakings of £94,937,629). This amount is more than enough to satisfy the amount provided for in the accounts of MSWL. In other words, GHLL appears to hold significant cash reserves on behalf of MSWL, which are in excess of the amounts required to satisfy the restoration costs provided for.

1.23 Note that to fund a restoration costing £91m likely only requires MSWL to provide £76m in cash, as the Local Council holds £15m on its behalf.

1.24 Overall, the Group holds cash of £120,909,915, although only has profit and loss reserves (from which it can pay dividends) of £54,411,980.

1.25 In practical terms, this means it will be relatively easy (and legitimate) for the shareholders to extract the first £54m from the business – be it in dividends, salaries, commissions, etc.

1.26 After that, the profit and loss reserves will be negative (principally, due to the requirement for MSWL to fund the restoration), and it will become harder for the owners to extract the remaining (approximately £67m of) funds:

1.27 If they attempt to do so via dividends, these will be unlawful dividends which may leave the directors personally responsible for the Group’s liabilities.

1.28 If they attempt to do so via any other means (salaries, commission payments etc) the business may now be wrongfully trading, which can also leave the directors personally responsible for liabilities.

Current implication

1.29 At present, although the mine has generated a lot of cash (to the tune of some £90m), it has not generated as much profit, due to the requirement to set aside earnings in order to restore the site after mining operations cease. In practise this makes it difficult for the ultimate shareholders to receive and benefit from this cash.

1.30 From an accounting perspective, the easiest way for the shareholders to get the cash generated from the mining operations would be to renegotiate what was required of it by the local council.

1.31 If the council were persuaded that a smaller restoration scheme would be appropriate (say, for half the costs), MSWL could then legitimately reduce their restoration provision as they would be able



to satisfy their obligation for half as much. This would mean creating another c. £45m in profits which could be legitimately issued to the shareholders as dividends.

- 1.32 MSWL and its shareholders therefore have a huge interest in the Council agreeing to a smaller restoration scheme, as this could free up large amounts of cash for distribution as profits. This may well be the simplest route available to the shareholders. However, the latest available information about the Group accounts indicated that they have significant cash reserves available that could be devoted towards the restoration liability, for which provision has been made in a total amount of £91,173,578.

Responses to specific comments made by Merthyr (South Wales) Limited

- 1.33 We have seen various instances and manners by which Merthyr (South Wales) Limited claim that they are unable to afford the full costs of restoration. These include the following:

- *“there are insufficient funds within the Escrow and restoration fund”* – Planning Statement for 2022 extension application P/22/0237
- *“insufficient funds in the Restoration Fund held by the Council, together with funds set aside by the Company”* - Delegated Report for 2022 extension application P/22/0237
- *“In 2016 the original owners of the company who were operating the mine were released from their original obligations to restore the mine, this was subsequently replaced by an Escrow Account in the amount of £15m which is fully funded along with a parent guarantee provided by Merthyr Holdings Limited.”* - Final restoration strategy for alternative restoration proposal P/25/0037

- 1.34 We stress that these claims require careful parsing.

- 1.35 It is certainly true that if the restoration scheme will cost in the order of £90m, there is not enough available in the Escrow account alone. Note that MSWL also refers to the Escrow account as the “Restoration Fund”, implying the “Escrow and restoration fund” referred to in the Planning Statement does not appear to relate to two sources of funding, but merely the £15m.

- 1.36 The excerpt from the Delegated Report for 2022 extension application may also be carefully worded: “funds set aside by the Company” may be carefully sidestepping the fact that there appears to be a £91m provision set aside, albeit the funds available to settle the obligation are held by the parent company rather than the Company itself.

- 1.37 It is likely true that the original owners of the company who were operating the mine were released from their original obligations to restore the mine. However, if it were correct that the new owners of the company were not bound to those obligations (or other similar obligations), I would not expect the financial statements to contain a provision. However, the financial statements do contain a provision of £91m, reflecting the preparer’s (Mr D Lewis) best estimate of the amounts that will be required to settle MSWL’s obligation.

- 1.38 It therefore does not appear that Mr D Lewis believes that MSWL’s obligation is limited to the £15m that is held in escrow, and given the financial statements have been audited, neither do the auditors.

Conclusions

- 1.39 From the information available to me, the following can be said:
- 1.40 At 31 December 2023, Mr Lewis has attested (by signing the financial statements of MSWL) that his best estimate of the costs required to restore the site at Ffos y Fran was £91.2m.
- 1.41 The full amount of the restoration costs has been loaned by MSWL to Gwent Holdings Limited, another Group company.
- 1.42 As at 31 December 2023, Gwent Holdings Limited still holds cash in excess of this amount, and so, if it were to repay MSWL what it owes, MSWL would be able to fully fund the £91.2m restoration costs.
- 1.43 Even if Gwent Holdings Limited were to distribute all of its available profits (which it has not done based on the information available at time of writing), it would be left with cash of around £67m which it could likely not distribute lawfully without wrongfully trading. Together with the £15m held in escrow this would fund substantially all of the £91m required for the full restoration scheme, and even if it did not have the full amount in cash, the company would have assets that would in principle be available to fund the liability to MSWL.



Brendan Cashman

10 November 2025

