

## Cumulative Effects

The Provectus Remediation Ltd Planning Statement seeks to show that no objectionable combined negative effects would be brought about by the proposed development. They refer to an application to the High Court (CO/5542/2006 - EWHC Admin 1427) by Leicestershire County Council (as Mineral Planning Authority) in which Mr Justice Burton set out 4 tests to determine whether some or all of the individually acceptable effects are so close to being unacceptable, that when combined together, the totality is unacceptable.

The 4 tests are:

- (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...*

In order to assess whether any combination of environmental features could give rise to unacceptable combined effects, Provectus Remediation Ltd gives a summary of whether each individual environmental topic is likely to give rise to significant effects and therefore could make a contribution to cumulative harm.

The table on the following pages gives their wholly inadequate assessment of each environmental topic (in grey italics) followed by our more realistic assessment.

**Noise**

*The impact of noise has the potential to come close to the thresholds of acceptability because the levels will be at or close to the upper limit set out in national planning guidance for periods of the working and restoration of the site.*

Noise levels will be above the acceptable levels of background noise + 10 dB(A) in many locations for a significant amount of time. The proposed coal processing area is on almost the highest part of the site, less than 200m from many residential properties and will be a major source of noise throughout the working of the site. 3m noise bunds will do little to shield residents from the noise of vehicles on the internal haul roads as engines will be level with or above the top of the bunds.

**Noise will therefore make a substantial contribution to cumulative harm.**

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**Air Quality**

*The potential impact from the proposal upon air quality is not considered to be significant. It does not therefore make a substantial contribution to cumulative harm.*

The impact of dust on local residents is likely to be significant.

The larger particulates will result dust soiling at nearby properties (over 600 within 200m) affecting windows, conservatory roofs, cars, washing, vegetable crops, solar panels etc.

Many recent scientific reports link the smaller particulates with significant health risks. This will cause a drastic change of behaviour for many residents, particularly the elderly, parents of young children and those with health problems.

The submission by Public Health England on 18 June 2015 raises concerns about the impact of dust emissions on health. It states “*The impact from opencasting operations at this specific site is difficult to quantify without more accurate data relating to population exposure duration and levels of PM<sub>10</sub> and PM<sub>2.5</sub>.*”

**This implies that the applicant’s assessment of the impact of their proposals on air quality are inadequate and must it must therefore be considered significant contribution to cumulative harm.**

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**Landscape and Visual Impact Assessment (LVIA)**

*The overall potential visual and landscape impacts are not likely to be significant. This topic area therefore does not make a substantial contribution to cumulative harm.*

There will be a major visual impact in a number of areas.

Due to the topology of the northern half of the site the workings will be clearly visible from properties on Ashover Road. 3m high bunds will not obscure the view. (We note that the bunds on the George Farm opencast site are 6-8m high.) This view will also be enjoyed by all southbound traffic on the A61 - 6,899 vehicles per day (applicant’s Transport Assessment figure). Many of these vehicles will make this journey on a daily basis and will therefore see this vista hundreds of times.

The view from properties on North Street and the playing field will be totally dominated by the 10m high storage mounds.

Users of Footpath 26, which passes through the southern end of the site, will have uninterrupted views of the east facing slopes of the storage mounds. These will be the site of near constant activity with diggers and dumper trucks as overburden is moved to and from the various cuts.

Conversely, much of the site will not be visible from surrounding streets because it will be obscured by residential property!

**LVIA will there fore make a significant contribution to cumulative harm.**

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### **Ecology**

*The impact upon ecology and nature conservation interests is not likely to be significant and will not therefore come close to the thresholds of acceptability.*

The proposed site, being almost surrounded by residential and commercial properties, is an oasis for wildlife, including protected species. Permanent loss of habitat on the nearby Biwater site (currently under development) and other nearby housing developments will likely to have resulted in the migration of wildlife to the Hilltop site. Consequently, if the Hilltop scheme were to go ahead it would result in the total loss of habitat for many species in the immediate locality.

Derbyshire Wildlife Trust in their submission of 14 December 2014 state:

*In order to minimise the impacts of the proposal on ground-nesting priority bird species, including skylark and grey partridge, we would recommend that measures are put in place as part of the phased nature of the works and progressive restoration to ensure that areas of suitable nesting habitat for these species are provided within the site boundary for the duration of the operation to avoid their total displacement from the site.*

This is unlikely to be achievable as the southern half of the site will be substantially taken up with overburden storage, the processing area and haul roads. The northern two fields will also be totally devoid of suitable habitat for a significant period since reinstatement of the first cuts will not be complete before the later cuts are commenced.

This will impact on all wildlife, not just ground-nesting priority species.

**The impact on wildlife habitats and the ecology of the area is therefore significant.**

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**Traffic & Transportation**

*The potential traffic impact is not considered to be significant. It does not therefore make a substantial contribution to cumulative harm.*

The A61 is running at or above capacity. The slightest obstruction results in long tailbacks which happens most days. The not infrequent problems on the M1 cause all but stationary traffic between Chesterfield and Alfreton. Current developments on the former Biwater site are causing further disruption.

**Any increase in HGV traffic from the proposed Hilltop site will make an already intolerable situation worse and must therefore be considered to have a significant impact.**

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**Archaeology and Cultural Heritage**

*The potential impact upon archaeology and cultural heritage is not considered to be significant. It does not therefore make a substantial contribution to cumulative harm.*

As further investigations have been requested the applicant is not in a position to claim that the impact will be insignificant.

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**Geology and Hydrogeology**

*The potential impact upon geology and hydrogeology is not considered to be significant. It does not therefore make a substantial contribution to cumulative harm.*

The possible hydrogeological impacts have been largely ignored. The effects on Far Tupton Wood are mentioned (as requested in the scoping opinion) and dismissed. Their conclusion that the woods lie on strata below the coal seams based on a slope of 10-12° is erroneous. Far Tupton Wood sits on a line of ancient bell pits indicating that it sits on strata ABOVE the coal seams. The trees are therefore at risk from drawdown of groundwater into the excavations. More worryingly, all the residential properties to the east of Far Tupton Woods are at greater risk being nearer to the excavations. Any lowering of groundwater levels brings the likelihood of clay shrinkage and consequent subsidence.

Network Rail are concerned about the consequences that breaking into old mine workings will have on ground water levels and the effect this might have on the integrity of Clay Cross Tunnel.

**As the hydrogeological impacts have not been adequately assessed they must be considered to be significant.**

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**Flood Risk**

*The proposal will not increase flood risk and has the potential to bring about flood alleviation measures as part of the restoration. Overall, the potential flood risk impact is not significant. It does not therefore make a substantial contribution to cumulative harm.*

The proposal carries significant flood risks. By their own admission, the watercourse to the south-west of the site, which they propose using for water discharge, has not been properly surveyed. Therefore the capacity of the watercourse and the culvert under Holmgate Road to its discharge in Press Brook is unknown. At the point nearest to the attenuation lagoons the watercourse runs through land and allotments which the applicant does not own or have rights over.

The siting of the lagoons gives further cause for concern as they will be in an elevated position on potentially unstable ground immediately adjacent to ancient bell pits whose depth and extent are unknown. Any failure of these lagoons would have a catastrophic impact on properties on Riber Crescent/Winster Close/North Street.

Network Rail is concerned about flooding of the track south of Clay Cross since the condition and behaviour of the downstream drainage system of Press Brook is not fully understood.

These issues have yet to be acknowledged or investigated by the applicant.

**The potential flood risk must therefore be considered to be significant.**

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**Soils and Landuse**

*The potential impact upon soils and agriculture is not considered to be significant. It does not therefore make a substantial contribution to cumulative harm.*

The applicant has claimed that one of the reasons for carrying out this scheme is to improve the quality of the agricultural land, yet here they state that its impact is not considered to be significant!

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Provectus Remediation Ltd then go on to argue that as, in their opinion, noise is the only significant environmental criteria then no objectionable combined negative effects would be brought about by the proposed development under the four tests.

Hilltop Action Group would argue that since most of the environmental criteria would be considered objectionable by local residents then this proposal would fail all four tests set out by Mr Justice Barton.

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### Test 1

By their own admission, *noise as an individual environmental area is considered to have the potential to make significant contribution to cumulative harm because it has the potential to come close to the thresholds of acceptability (nationally recognised noise limits applicable to mineral development).*

Air Quality (or at least the very real fear of harm to health from dust particles), Visual Impact, Hydrogeological Issues and Ecology are all environmental areas that have the potential to make significant contribution to cumulative harm as they come close to the thresholds of acceptability.

**We therefore conclude that these environmental features combine to give rise to unacceptable cumulative effects in relation to Test 1.**

**This proposal therefore FAILS Test 1.**

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### Test 2

Noise, Air Quality LVIA, Hydrogeological concerns, Flood Risk and Ecology are all individually close to being objectionable.

**As there are at least four environmental features that are close to being objectionable this is an important matter to take into account when looking at the totality.**

**This proposal therefore FAILS Test 2.**

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### Test 3

Noise, Air Quality and LVIA taken in combination will cause significant lifestyle changes for thousands of local residents. Whether at home in their gardens or travelling to/from work, school, shopping etc the Hilltop Scheme will be an ever present intrusion into their lives.

**This particular combination of otherwise individually unobjectionable features will cause objectionability in their totality.**

**This proposal therefore FAILS Test 3.**

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## Test 4

In their assessment of test 4 the applicant states:

*The environmental and local amenity issues that have been considered and assessed as part of this planning application are not considered to be unusual for a surface coal mining proposal in the Derbyshire Coalfield. In fact, the issues are quite usual. From a review of the assessment work, it is considered that there is no unusual feature in this case or some unusual combination of features that would, in some way, render the potential combination unacceptable when the individual features were not.*

Firstly, the site is NOT on land designated as *Nottingham, Derbyshire and Yorkshire Coalfield National Character Area* but is in the *Peak Fringe and Lower Derwent National Character Area*. A surface coal mining proposal in the Derbyshire Coalfield might historically have been deemed acceptable but we doubt it would be now. Such a development in an area described as '*An undulating, well-wooded, pastoral landscape on rising ground between the Derbyshire Coalfield and the Peak District*' cannot in any way be considered 'usual'.

Secondly, there are THREE unusual features in the case of the Hilltop Scheme:

### 1. **The close proximity of so many people to the site is unprecedented.**

There are a number of accepted criteria used to assess close proximity:

- In Scotland and Wales there has to be a 500m buffer zone between opencasting works and residential property.
- A Coal Authority Mining Report will report whether a property is within 800m of the boundary of an opencast site for which a licence to remove coal by opencast methods has been granted.
- The National Planning Policy Framework/Planning Practice Guidance/Guidance/Minerals/Assessing environmental impacts from minerals extraction/Dust emissions requires that the impact of fine particulates on residential properties and other sensitive uses within 1km of site activity are considered.

Our detailed analysis of the local area shows that there are at least 2228 properties within 1 km of the Hilltop site. (684 within 200m, 544 between 200m and 500m and in excess of 1000 between 500m and 1 km) Taking the average UK household to be 2.3 people (Office for National Statistics, 2011 census) this equates to **in excess of 5,000 people adversely affected by these proposals on a daily basis.**

The number of people travelling to work in the vicinity of the site or pupils attending local schools will further increase the numbers adversely affected.

Local residents going about their daily lives have little choice but to use the roads encircling the site (Derby Road, Ashover Road, Woodland Grove, Russell Gardens, Woodland Way, Harewood Crescent, Coupe Lane, North Street, Holmgate Road) whether on foot, cycling, on public transport or by car. The majority of this circular route is within 200m of the site boundary.

## **2. The Clay Cross Regeneration Scheme**

Clay Cross has been undergoing a programme of regeneration in recent years. Old mining spoil heaps and industrial sites have been reclaimed and the first phase of new housing and retail premises completed. The former Biwater site is currently under development with new roads, retail outlets, a hotel and public house, housing and commercial units planned. This is on the east side of the A61, immediately opposite the proposed Hilltop opencast site. This development has already suffered one setback when the previous owners and developers of the site went into administration and abandoned the site.

An opencast site on the opposite side of the A61 to this development is not going to encourage investment in the project and will jeopardise its success.

## **3. Eradication of wildlife habitats**

Opencasting on this site will remove 70 acres of wildlife habitat for the duration of the project. This habitat consists of pasture and arable land with mature hedgerows and bordering woodland. The development on the adjacent Biwater site has already resulted in a significant loss of local habitat and a significant amount of wildlife will have been displaced onto the Hilltop site. The affect of further loss of habitat has not been investigated by the applicant.

**These unusual features of the Hilltop site mean that the harmful environmental effects of the scheme will be unduly amplified and consequentially render the combination objectionable.**

**This proposal therefore FAILS Test 4.**

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**Conclusion**

The combined negative effects of Noise, Air Quality, Visual Impact, Flood Risk and Hydrogeological concerns on so many individuals on a daily basis and Ecology on wildlife, along with the total absence of any deliverable community benefits, means that conditions of Clause 149 of the National Planning Policy Framework cannot be met.

*149 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 grant of planning permission.*

**Planning permission for the extraction of coal on the Hilltop site should therefore NOT be granted.**

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