

The Company Secretary
Celtic Energy Ltd
Heol Ty Aberaman
Aberaman
Aberdare
CF44 6RF

Eich cyf . Your ref: SW 696/7
Ein cyf: Our ref: A-PP185-07-014

Date: 7 December 2004

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990: SECTIONS 77 APPLICATION BY
CELTIC ENERGY LTD
PROPOSED EXTENSION TO EXISTING OPENCAST COAL SITE WITH ON-SITE
WASHERY, FOLLOWED BY RESTORATION AND AFTERCARE MANAGEMENT
AT EAST PIT, GWAUN CAE GURWEN, NR AMMANFORD**

Consideration has been given to the report of the Inspector Clive Nield BSc, CEng, MICE, MCIWEM who held a local inquiry into the application by Celtic Energy Ltd for an extension of an existing opencast coal site, with an on-site washery, followed by restoration and aftercare management at site address East Pit East Revised OCCS, Gwaun Cae Gurwen, nr Ammanford.

2. On 3 April 2003 the National Assembly for Wales directed under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act) that the application be referred to it rather than be determined by the local planning authority. On 1

Parc Cathays
Caerdydd
CF10 3NQ

Cathays Park
Cardiff
CF10 3NQ

December 2004 the Assembly resolved that a committee, to be known as Planning Decision Committee (2)2004/5 be established, in accordance with Standing Order 17 to discharge the functions of the Assembly under Section 77 of the 1990 Act, in respect of the application by Celtic Energy Ltd. Accordingly, the Planning Decision Committee has considered the appeals and has resolved under Standing Order 17.16 to adopt this letter.

3. The Inspector's conclusions are set out at paragraphs 282 - 331 of his report, a copy of which is enclosed, and those paragraphs are at Annex A to this letter. The Inspector recommended that the application be approved, subject to planning conditions. Subject to the comments below the Planning Decision Committee agree with the Inspector's conclusions and accept his recommendation.

4. The Planning Decision Committee (2) 2004/4 originally established to consider this application met on 3 August 2004 and concluded that it would be necessary to seek further information relating to issues raised at the inquiry before they could reach a decision on the application. These were :-

i) the extent to which it was anticipated that coal is likely to be transported by from the site by rail were planning permission to be granted for the opencast application and the new railhead, and also the imposition of a "Grampian" condition preventing coaling operations until a new railhead to serve the site is constructed and operational, and

ii) whether the restrictions on the movements of heavy goods vehicles, with the capacity of carrying coal or minerals from entering or leaving the site, in suggested condition 21 would prevent these heavy goods vehicles passing the school at times children were entering or leaving the site.

5. A letter from the National Assembly dated 5 August 2004, a copy of which is at Annex B to this letter, was sent to you seeking information on these matters. In response you submitted to the National Assembly's Planning Division a letter dated 16 August 2004, a copy of which is at Annex C to this letter, providing further information on the matters raised. A copy of your letter of 16 August was subsequently copied to those persons and organisations who appeared at the inquiry seeking their comments. The responses from those parties were then copied to you and the Neath Port Talbot County Borough Council with an invitation to comment.

6. The representations submitted in response to the above consultation have been taken into account by the Planning Decision Committee in reaching their decision on the application. The Planning Decision Committee do not consider that it is necessary to re-open the inquiry to consider the additional information.

7. The Planning Decision Committee have carefully considered the Inspector's conclusions and recommendation as well as the additional information and the

representations referred to above.

Inspector's conclusion and recommendation

8. The question of whether the granting of permission for this development would contravene the legal requirements under previous authorisations was raised at the inquiry. The existence of requirements under a previous planning permission would not preclude the granting of a subsequent planning permission overriding the terms of that previous permission. Nevertheless, the existence of a previous planning permission is a material consideration in the determination of a planning application. In this case the Planning Decision Committee have taken into account the requirement of the previous planning permission for the restoration of the site which would be achieved earlier if the current proposal were refused. However, for the reasons given below they have concluded that the balance in this case lies in favour of granting planning permission. The enforcement of conditions imposed under a planning permission would in the first instance be a matter for the local planning authority. Any requirements relating to the site imposed under Compulsory Rights Orders would be a matter for the site owner and site operator.

9. The Planning Decision Committee have considered the application having regard to the Assembly's Sustainable Development Scheme and the guidance of Minerals Planning Policy Wales on sustainable minerals extraction. They accept that the main issues in this case are the effects on visual amenity and the landscape, having regard to both local impact and that on the National Park, the effects on amenity and health of local residents having particular regard to noise, dust and vibration, the effects on the local economy and the need for coal.

10. The Planning Decision Committee agree with the Inspector's assessment that the impact on the landscape and visual amenity would not significantly differ from that of the existing site and previous operations. They accept his view that, while there would be limited harm to local amenity and long distance views from the National Park, the most significant factor that would result from the proposal would be the delay in restoring the site. They also agree with him that the effects on nature conservation and ecology would be negligible.

11. As regards the amenity of local residents the Planning Decision Committee agree with the Inspector that the impact on each amenity factor would be at best negligible and at worst acceptable. Nevertheless, they also agree with him that the main argument against the development is the cumulative effect of these impacts bearing in mind the length of time local people have endured opencast operations on this and other sites in the area.

12. The Planning Decision Committee agree with the Inspector that the setting up under the Section 106 Agreement of a fund for restoration work is a significant benefit, although it would only represent a small percentage of the anticipated costs of those works, but that the other matters covered by the Agreement are relatively minor matters.

13 The Planning Decision Committee agree with the Inspector that there is a need for the coal and that this need carries considerable weight, and that there would be

substantial benefits to the economy of the area albeit for a limited period of about 9 ½ years in total, and a reduced risk to other jobs at the Onllwyn Washery and other opencast sites in the area, as a result of the proposed development. They also agree with him that the proposed development would be unlikely to be a significant deterrent to other investment, and would have a negligible effect on tourism, in the area.

14. The Planning Decision Committee agree with the Inspector that the judgement in this case is finely balanced with the cumulative effect on local amenity, which they accept is a powerful argument against the development, set against the substantial benefits to the local economy and the need for the coal. On balance they agree with the Inspector that the need for the coal and the economic benefits would outweigh the harm to the environment and the amenity of local residents. The proposal would allow 2.1M tonnes of coal to be worked at East Pit, which would otherwise be effectively sterilised, and the Planning Decision Committee accept that that considerable weight should be given to the need to retain a viable coal industry for the benefit of society as a whole.

15. In reaching their conclusion the Planning Decision Committee have not given significant weight to the Inspector's reference to an objector's comments about the basis for the 1993 decision on the Brynhenllys opencast site.

16. The Planning Decision Committee agree with the Inspector that the Environmental Statement has dealt adequately with all matters of significance and have taken that environmental information into account in reaching their decision.

Additional information

Transportation of coal by rail

17. Your letter of 16 August 2004 stated that your company anticipated that half the of the output from the opencast site would be transported by rail using the adjacent rail loading pad at Gwaun Cae Gurwen which is the subject of an planning application to be determined by the Council.

18 The consultation responses included comments about the structural integrity of the Gwaun Cae Viaduct but in your letter of 7 October you stated that you had an assurance from Network Rail that the line can be brought up to the required standard. You also stated that the rail line to be used forms part of the national network and is regarded by Network Rail as an operational facility which can be made available for use by customers within a matter of weeks from notification of intention to make such use. The Planning Decision Committee do not consider that there is any compelling evidence to indicate that the line would not be brought up to standard.

19. As regards the use of a "Grampian" condition the representation include reference to the advice in Paragraph 40 of Welsh Office Circular 35/95 that such condition should only be imposed on a planning permission if there are at least reasonable prospects of the action in question being performed within the time limit imposed by the permission. It was argued that a Grampian condition would clearly

not be appropriate in the present case and would only be appropriate in situations where there is reasonable certainty that any relevant off-site work would in fact be accomplished. In this case it was suggested that there is a high degree of uncertainty over the proposed rail pad. In the Planning Decision Committee's view it is not necessary or advisable to predetermine the outcome of the rail pad application and that provided the application is not objectionable in policy terms there is a reasonable prospect that it will be granted albeit with conditions.

20. The representations also raised the issue of the adequacy of the Environmental Impact Assessment in respect of the rail pad application. In the Committee's view this is a matter which falls to be considered in the context of that application.

21. Your letter of 16 August 2004 indicated that your company would be entirely comfortable with the imposition of a "Grampian" condition subject to the terms indicated. Overall, the Planning Decision Committee consider that it would be appropriate to impose a "Grampian" condition preventing coaling operations until a new railhead to serve the site is constructed and operational. In the Planning Decision Committee's view such condition would be in accordance with the guidance of Welsh Office Circular 35/95 on the use of "Grampian" type conditions. Additionally, the applicant's proposal to transport approximately half of the coal output by rail would be in accordance with Government policy which encourages the carriage of freight by rail or waterway rather than road wherever this is economically possible.

22. The representations also included comments about the use of public money to facilitate the rail pad but the Planning Decision Committee do not consider that this is a matter which falls to be considered in the context of this application. It was also suggested that if movement by rail became impossible for any reason during the period of production the only alternative would be movement by road. The Planning Decision Committee do not consider that it would be appropriate to impose restrictions additional to those in the "Grampian" condition.

Condition 21

23. Your letter of 16 August 2004 stated that the timings in the condition were based on what the Authority advised and on former voluntary restrictions imposed by the company and its predecessor British Coal in response to lorry traffic passing the school. The Neath Port Talbot County Borough Council has confirmed that its Planning Committee had resolved to impose a planning condition (21) relating to the issue of lorry movements and school hours/safety and that it had no more comments to make on this issue. On the basis of the submitted evidence the Planning Decision Committee see no reason to consider that the timings in the condition are inappropriate.

24. The representations included the suggestion that restrictions should be applied in the context of other schools. In the Planning Decision Committee's view there is insufficient evidence to justify such a restriction.

Post inquiry representations dealing with matters other than the transportaion of coal by rail and condition 21

25. The Planning Decision Committee have had regard to all other representations submitted after the inquiry closed but do not consider that any new evidence or new matter of fact was raised which would materially affect their decision on the application.

26. The post-inquiry correspondence included representations about the fencing of common land and agreements in respect of common land. The impact of the proposed scheme on common land was dealt with by the Inspector in his conclusions and taken into account by the Planning Decision Committee as a material consideration in reaching their decision. However, the Planning Decision Committee consider that questions raised at the inquiry relating to commoners rights, and any negotiations between the Commoners Association and Celtic Energy Ltd, are matters for the parties concerned and not relevant to the decision on this planning application. As regards the fencing of common land Section 194 of the Law of Property Act 1925 provides that the consent of the Assembly is usually required to place buildings, fencing or works on common land. However, there is an exemption in Section 194 (4) from the need to obtain a consent where such items are placed on the land in connection with the taking or working of minerals. It is for the potential applicant to decide whether the exemption applies. It is for the parties who can act under Section 194 (2), which enables an application to be made to the county court for the removal of unlawful items and the restoration of land, to decide whether to challenge a decision that the exemption applies. Those parties are the county or county borough council, a national park authority, or anyone with sufficient interest in the land, such as the owners or any commoners for example.

27 There was reference in the post-inquiry correspondence to the introduction of new buffer zones to protect communities from noise and dust generated by open cast mining. A Coal Minerals Technical Advice Note will provide further advice to that in Minerals Planning Guidance Wales on the factors that should be taken into account when defining buffer zones for particular minerals. This is not expected to be published in draft form for consultation before the end of this year and the Planning Decision Committee do not consider that the decision on this application should be deferred pending the publication of the draft Technical Advice Note. The Inspector dealt with the issue of noise, dust and blasting vibration in his report and the Planning Decision Committee agree with his conclusions.

28. The post-inquiry representations also included reference to the off-site lorry route, the condition of the road at Gelligron and the Boundary Commission recommendation for the transfer of Cwmllynfell to Carmarthenshire but the Committee do not consider that the evidence before them on these matters is such as to materially affect their decision. The question of a site visit by the Planning Decision Committee was also raised in the representations. It is not the usual practice for members of a Planning Decision Committee to make site visits and the Planning Decision Committee do not consider that such visit is necessary in this case.

Conditions

29. The Planning Decision Committee have carefully considered the question of the conditions to be attached to the planning permission having regard to the conditions discussed at the inquiry, the comments of the Inspector and the advice contained in Welsh Office Circular 35/95.

30. For the reasons given in paragraphs 17 –22 above the Planning Decision Committee consider that a condition should be imposed preventing coaling operations until a new railhead to serve the site is constructed and operational.

31. The Inspector noted that evidence was found of the use of roof space at Number 44 Ochr-y-Waun as a roost for brown long eared and pipistrelle bats. In view of the Assembly's obligation to protect species under the Habitats Directive 92/43/EEC the Planning Decision Committee consider that a condition should be imposed requiring the developers to demonstrate that they have a habitats licence prior to disturbance of any such species. They also consider that condition 6 should be amended to omit the word substantially and to refer to condition 5 as the purpose of condition 6 is to identify the approved plans and documents.

32. Subject to the above modifications and other minor amendments the Planning Decision Committee consider that the conditions recommended by the Inspector, listed at the Annex to his report, should be imposed for the reasons given by him.

FORMAL DECISION

33. Subject to the above comments the Planning Decision Committee hereby grant planning permission, for the reasons given by the Inspector, in respect of planning application Ref P/2002/917 dated 31 July 2002 for the extension of an existing opencast coal site, with an on-site washery, followed by restoration and aftercare management (revision of previous application Ref No P2001/0943) at East Pit East Revised OCCS, Gwaun Cae Gurwen, near Ammanford subject to the conditions in Annex B to this letter.

34. This letter, a copy of which has been sent to the Director of Environment and Consumer Services Neath Port Talbot County Borough Council, does not convey any approval or consent which may be required under any enactment, bye law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

Carwyn Jones AM
Chair, Planning Decision Committee (2) 2004/5

Enc: Leaflets "H" and "HC"

