

CYNGOR SIR POWYS COUNTY COUNCIL.

**CABINET EXECUTIVE
30th April 2019**

REPORT AUTHOR: County Councillor Aled Davies
Portfolio Holder for Finance

SUBJECT: Celtic Energy Update

REPORT FOR: Decision / Discussion / Information

1. Summary

1.1 This report is to update Cabinet with regard to the position in respect of Celtic Energy and the associated s106 agreement.

2. Background

2.1 Planning permission for extension to the Nant Helen Surface Mine was granted in March 2012 subject to a Section 106 agreement. This agreement required quarterly payments to be made to the Council into a Restoration Escrow Account from March 2012 until September 2017 until a total of £30,280,380 was reached. It also required 7 annual payments of £100,000 as contribution to a Communities Facilities Fund.

2.2 In March 2016 Celtic Energy suspended these payments, the result of which was that £19,500,000 was held in the Restoration Escrow Account and £500,000 in the Communities Facilities Fund. The payment default provisions of Schedule 2(4) of the Agreement therefore would be applicable from 2nd March 2017. These require all operations at the site to cease immediately and no coal to be exported from the site until such time as the outstanding payments have been made.

2.3 However, prior to the default, Celtic Energy met with officers of the Council to set out their position and claimed that continuing to make the required payments would potentially make the company bankrupt leaving a significant liability which the Council would need to remedy. Invoking the requirement to cease working would also have adverse impacts on the company as well as resulting in redundancy for all employees at the site. It was the view of PCC Officers' at the time that it was not in the public interest to enforce the agreement which could trigger the bankruptcy of the company and/or require the cessation of employment at the site.

- 2.4 Development was allowed to continue on site but was closely monitored to ensure that the restoration liability was not significantly increased. However, for business reasons, Celtic Energy mothballed the site at the end of October 2016. Discussions between Celtic Energy and officers of the Council sought to reduce the restoration liability and the Council sought external advice with regard to this. This advice included the view that an acceptable restoration scheme would be achievable with the £19.5m already held in the Escrow account.
- 2.5 A revised restoration scheme for the site was submitted on 31st August 2016. This application was considered by the Planning, Taxi Licensing and Rights of Way Committee on 2nd February 2017 following a site visit. The Committee resolved to approve the application in accordance with the officer recommendation.

3. Default Interest

- 3.1 For the financial years 2015/16 and 2016/17, an accrual for the default interest was applied in the Council's accounts. However, an accrual for the default interest was not applied in the accounts for the financial year 2017/18. This was based on the fact that the default interest by this time totalled £758,571.38 and, if this was applied in the accounts with no likelihood of it being charged to Celtic Energy, it would create an asset that the Council would subsequently need to write off. As such, the s151 officer alongside other relevant Finance officers felt it was not prudent to create this asset on the basis that it was not going to be recoverable from Celtic Energy.

4. Wales Audit Office

- 4.1 Since the default of payments by Celtic Energy in March 2016, Wales Audit Office have queried the position in relation to the s106 Agreement requirements not being met in respect of the required payments. In respect of the annual accounts for the 2017/18 financial year they also queried default interest not being applied in the accounts.
- 4.2 Further to this they have queried why a revised s106 Agreement has not been put in place following the Planning Committee's decision to agree to the revised restoration scheme.

5. Current Situation

- 5.1 Celtic Energy recommenced coaling on the site on 7th January 2019. This has resulted in the site being operated outside of the time period specified by the original planning consent. An application to regularise this situation was submitted prior to the consent lapsing and officers recommended that this consent was granted at the 21st March Planning Committee meeting. This was subsequently approved and is now

subject to the requirement to update the s106 Agreement within 3 months of the consent.

- 5.2 The recommencement of coaling has also resulted in the site being in breach of the current s106 Agreement in relation to payments being in default. Celtic Energy itself is also keen to agree a revised s106 Agreement that reflects the new (2016) restoration scheme. Officers are currently securing information to ensure that any revised s106 Agreement is sufficient to ensure the site is appropriately restored. Consideration of enforcing the current s106 Agreement i.e. stopping coaling will be considered if it is deemed to be in the public interest. This will continue to be considered until compliance with the current s106 or a revised s106 is secured.
- 5.3 Proposals for the potential use of the site as a rail testing facility are currently being investigated by Welsh Government in conjunction with both Powys County Council and Neath Port Talbot Council. If these proposals are progressed then the S106 will require further revision to accommodate the revised restoration profiles and after use of the site.

6. Proposal

It is proposed that this update Report is received.

7. Options Considered / Available

None

8. Preferred Choice and Reasons

It is proposed that this update Report is received

9. Impact Assessment

9.1 Is an impact assessment required? No

9.2 If yes is it attached?

10. Corporate Improvement Plan

N/A

11. Local Member(s)

12. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

If so please provide their comments

13. Communications

Have Communications seen a copy of this report? Yes/No

Have they made a comment? If Yes insert here.

14. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

14.1 Legal

Legal: The recommendations can be supported from a legal point of view

14.2 Finance

The Financial Reporting and Policy Accountant comments that the report accurately states the position recorded in the 2017-18 accounts of the Authority and that the situation will be monitored to reflect changes as they occur.

14.3 Corporate Property (if appropriate) - NA

14.4 HR (if appropriate) - NA

14.5 ICT (if appropriate) - NA

15. Scrutiny

Has this report been scrutinised? No

16. Data Protection

If the proposal involves the processing of personal data then the Data Protection Officer must be consulted and their comments set out below.

17. Statutory Officers

17.1 The Solicitor to the Council (Monitoring Officer) commented as follows: "I note the legal comments and have nothing to add to the report."

17.2 The Head of Finance (Section 151 Officer) notes the comments of the Financial Reporting and Policy Accountant and supports the approach taken.

18. Members' Interests

18.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should

declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
<p>That the Celtic Energy Update Report be received and that:</p> <ol style="list-style-type: none"> 1. The suspension of payments from the 2012 s106 agreement continues, provided that this remains in place and is retrospectively approved. 2. That an updated s106 be entered by 21st June 2019. 	<p>Update report required for Audit purposes.</p> <ol style="list-style-type: none"> 1. The current bond held is considered sufficient to restore the site in accordance with the 2016 permission. 2. This will provide for an updated position for both the operator of the site and Powys County Council and will regularize the s106 in relation to the currently consented landform.

Relevant Policy (ies):	
Within Policy:	Y / N
Within Budget:	N/A

Relevant Local Member(s):	
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Person(s) To Implement Decision:	N/A
Date By When Decision To Be Implemented:	N/A

Is a review of the impact of the decision required?	Y / N
If yes, date of review	
Person responsible for the review	
Date review to be presented to Portfolio Holder/ Cabinet for information or further action	

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Background Papers used to prepare Report: