

Regulatory Committee/ Cabinet

Dorset County Council



Date of Meeting	Regulatory Committee 15 September 2016 Cabinet 28 September 2016
Officer	Matthew Piles, Service Director - Economy
Subject of Report	Revised proposed financial security and S106 legal agreement arrangements in respect of the conditional approval of 39 planning applications (no's 6/2012/0571-0609) to enable the extension of the operational life of oilfield development at Wytch Farm, Wareham and Kimmeridge Oilfields through the variation of conditions attached to existing permissions for Perenco UK Limited.
Executive Summary	This report updates members on progress with the determination of 39 planning applications (no's 6/2012/0571-0609) to enable the extension of the operational life of the oilfield development at Wytch Farm, Wareham and Kimmeridge Oilfields following the resolution of the Planning Committee on 6 September 2013. It assesses whether there have been any material changes in circumstances since that conditional resolution to approve the applications and seeks agreement for revised financial security arrangements and terms for the required Section 106 agreement.
Impact Assessment:	Equalities Impact Assessment: This report concerns the determination of applications for planning permission and not any changes to any new or existing policy with equality implications.
	Use of Evidence: The recommendations have been made after consideration of the applications and supporting documents, the relevant plans, government policy, legislation and guidance, representations and all other material planning considerations as detailed in the main body of the report.
	Budget: Members previously conditionally resolved to grant consents to these applications subject to the applicant first putting in place guarantees and funds to cover the cost of compensatory measures, decommissioning, restoration and aftercare. These costs are very high and the guarantees and security were also to be supported by a legal

	<p>agreement. Since then lengthy discussions have changed the nature by which these funds will be held and guaranteed.</p>
	<p>Risk Assessment: As the subject matter of this report is the determination of planning applications the County Council's approved Risk Assessment Methodology has not been applied. However, the financial risks associated with the potential failure of the operation or decommissioning and restoration of the oilfield and the ability of the County Council to enforce any necessary remedies is such that further detailed negotiations have taken place since this matter was last considered and these are addressed in the main body of this report.</p>
	<p>Other Implications: None</p>
<p>Recommendation to Regulatory Committee</p>	<p>That the Service Director - Economy be authorised to GRANT planning permission for the 39 planning applications (no's 6/2012/0571-0609 subject to the following:</p> <ul style="list-style-type: none"> (i) the planning conditions referred to in the resolution of the Planning Committee of 6 September 2013 and any revised conditions agreed by the meeting of this Committee; and (ii) any further amendments to the planning conditions in respect of timescales for site decommissioning and restoration which the Service Director - Economy considers are necessary in consultation with the Chairman and Vice Chairman of the Regulatory Committee; and (iii) any minor amendments to the planning conditions which the Service Director - Economy considers are necessary to improve their accuracy, clarity and enforceability; and (iv) the prior completion of a S106 agreement in accordance with the revised Heads of terms at Appendix 4 to this report; and (v) revised financial security arrangements, as set out in this report, being secured to the satisfaction of the Service Director - Economy for the provision to the MPA of funds for the decommissioning, restoration and aftercare of the Wytch Farm, Wareham and Kimmeridge Oilfields in the event that the applicant fails to complete these works.
<p>Reason for Recommendation</p>	<p>The reasons for granting permission were set out in the conclusions in section 7.22 of the original report to the Planning Committee on 6 September 2013 and have not been materially affected by the adoption of the new Development Plan. The Appropriate Assessment has been reviewed and remains sound. The revised S106 agreement and financial arrangements detailed here ensure that the County Council has greater security in enforcing and/or stepping in directly to address any failure in the operation or decommissioning, restoration and aftercare of the Wytch Farm, Wareham or Kimmeridge Oilfields.</p>
<p>Recommendation to Cabinet</p>	<p>That Cabinet endorse the revised financial arrangements as set out in this report, being secured to the satisfaction of the Service Director –</p>

Wytch Farm, Wareham and Kimmeridge Oilfields

	Economy and the Chief Financial Officer
Reason for Recommendation	To ensure that any steps the MPA have to take to enforce or step in to directly address any failure in the operation or decommissioning restoration and aftercare of the Wytch Farm, Wareham or Kimmeridge Oilfields are carried out at no cost to the public purse.
Appendices for Regulatory Committee	<ol style="list-style-type: none"> 1. Agenda Item 4, Report of Head of Planning to the meeting of the Planning Committee on 6 September 2013. This can be downloaded by following the link: http://dorset.moderngov.co.uk/Data/Planning%20Committee/20130906/Agenda/06%20Agenda%20Item%2004%20File%20-%20PLC%20060913%20REP%204%20Wytch%20Farm%20Oilfield-1.0.pdf (Please click on the link above. However, if you have a problem opening the link please copy and paste it to the address bar in your internet browser. A hard copy is also available in the Members Room.) 2. Minutes of the meeting of the Planning Committee on 6 September 2013. This can be downloaded by following the link: http://dorset.moderngov.co.uk/Data/Planning%20Committee/20131010/Agenda/04%20Agenda%20Item%2003%20File%20-%20PLC%20060913%20Minutes.pdf (Please click on the link above. However, if you have a problem opening the link please copy and paste it to the address bar in your internet browser. A hard copy is also available in the Members Room.) 3. Heads of Terms for the S106 Agreement agreed at the meeting of the Planning Committee on 6 September 2013. 4. Revised Heads of Terms for the required S106 Agreement.
Background Papers	Planning application files 6/2012/0571-0609
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1. Background

- 1.1 The Planning Committee at its meeting on the 6 September 2013 considered a report by the Head of Planning, attached at Appendix 1, on 39 planning applications to enable the extension of life of oilfield development at the Wytch Farm, Wareham and Kimmeridge Oilfields. The applications sought permission to allow the oilfields to operate for an additional period such that it would not be decommissioned and restored until 2037. Under the existing planning permissions and obligations, the oilfield is due to close by the end of 2016.
- 1.2 The application was made by Perenco UK Ltd who is the operator of the oilfields and the lead partner in a consortium that runs the Wytch Farm and Wareham Oilfields. Other partners include Premier, Maersk, Ithaca Energy and Talisman.
- 1.3 Perenco UK Ltd run the oilfields under a series of consents, including those 39 which were granted in December 2011 that are personal to them, having bought the operation from BP Exploration Operating Company (BPEOC). BPEOC was the previous lead partner and operator and had developed and ran the Wytch Farm operation since 1984.
- 1.4 In September 2013 the Planning Committee resolved to approve the 39 applications for the extension of life of the oilfields subject to, in summary, planning conditions as referred to in the minutes at Appendix 2 to this report, and subject to:
 - the completion of a S106 agreement in accordance with specific Heads of Terms; and
 - the approval of by the Head of Planning of the Appropriate Assessment for the purposes of Regulation 61 of the Conservation of Habitats and Species Regulations 2010; and
 - arrangements being secured to the satisfaction of the Head of Planning to provide funds for the decommissioning, restoration and aftercare of the Wytch Farm, Wareham and Kimmeridge Oilfield sites should the applicant or BP fail to complete these works.

2. Progress in Determining the Planning Applications since September 2013.

- 2.1 Unusually, three years after resolution of the Planning Committee, decision notices for the 39 planning applications have yet to be issued. This is because it has not proved possible to secure some of the pre-requisites of the Committee's resolution and lengthy negotiations over alternative arrangements have since taken place.

Appropriate Assessment

- 2.2 The Planning Committee on 6 September 2013 highlighted the importance of ecological considerations.
- 2.3 The majority of facilities and infrastructure associated with the oilfields lie adjacent to, and in some cases within, areas subject to European level wildlife designations as Special Protection Areas (SPAs) and/or Special Areas of Conservation (SACs), and wetland sites designated under the international Ramsar Convention. As a consequence, the MPA must have regard to the test under Regulation 61 of the Conservation of Habitats and Regulations 2010, and ensure that the proposals are determined in light of their impacts on the relevant designations and in accordance

with the law. To this end an Appropriate Assessment was carried out and was included in the original report at Appendix 7.

- 2.4 At the time, Natural England were, as required, consulted on the Appropriate Assessment. However, only a preliminary view had been received at the time the report to the Planning Committee was written. Therefore, the recommendation considered it expedient to defer detailed consideration of any further response to Head of Planning. However, a further response from Natural England was received on the 5 September 2013, the day before the meeting which detailed their acceptance of the Appropriate Assessment.
- 2.5 More recently the Senior Ecologist has reviewed the original Appropriate Assessment and the response from Natural England to ensure that three years on these remain fit for purpose. The Senior Ecologist has advised me that she is satisfied with them and I am therefore content that they fulfil the requirements of Regulation 61 of the Conservation of Habitats and Species Regulations 2010, and that the conclusions of the Appropriate Assessment remain sound and in accordance with legislation.

S106 Agreement and financial security arrangements

- 2.6 The costs of decommissioning and restoring the oilfields is very significant. A report by Wood Group PSN produced in May 2016 calculated these to be in the order of £148M. Under the existing permissions and legal agreement relating to the operation of the oilfield until the end of 2016, BPEOC is under obligation, as guarantor, to undertake, or to provide DCC with funds for, the restoration and aftercare of the oilfields should Perenco fail to complete these works. The September 2013 resolution of the Planning Committee again required a legal agreement which, amongst other matters, obliged BPEOC, as guarantor, to step in and undertake decommissioning, restoration and aftercare of the oilfield sites or provide the MPA with funds to do so in the event that this was not completed by Perenco UK or its parent company Perenco S.A.
- 2.7 The September 2013 report emphasised that, given the duration of the proposed extension in the life of the oilfields, there was a need to require the provision to DCC of financial security for the costs of decommissioning, restoration and aftercare in addition to the obligations under the proposed S106 agreement. This would enable the County Council to undertake these works even if Perenco and BPEOC did not fulfil their obligations themselves, and avoid any potential risks over the future enforceability of the S106 agreement. The Planning Committee's resolution included the provision of such financial security as a pre-requisite of approval of the applications.
- 2.8 Since the 2013 resolution of the Planning Committee it has emerged that BPEOC is not willing to agree to be the guarantor of Perenco's obligations in respect of the proposed extension of life of the oilfields. As a consequence the decision notices have not been issued and instead detailed negotiations have taken place on alternative arrangements. The Chief Financial Officer has been involved in these discussions to ensure that financial arrangements are robust and that no liability falls on the public purse. These negotiations have only recently approached their conclusion.
- 2.10 The result of this has been a significant change to the arrangements previously put before the Planning Committee and therefore some of the terms of the legal agreement which the Committee agreed, are no longer appropriate. The principal changes, outlined below, will now require agreement of the Regulatory Committee.

- 2.11 In normal circumstances the Service Director – Economy has delegated powers to sign S106 agreements. However, the potential financial implications for the County Council of this particular agreement are of such significance that this decision will also need to be endorsed by Cabinet.

3. Revised Financial Security Provisions and S106 Legal Agreement

S106 Agreement

- 3.1 The Summary Heads of Terms (HoTs) for a S106 agreement considered by Planning Committee in September 2013 are reproduced as Appendix 3 to this report. These were sent to members as part of the update sheet and are therefore different to those contained in the original report. Revisions to those HoTs are now recommended and these are shown at Appendix 4 to this report. The revisions reflect changes arising from the discussions with Perenco that have taken place since September 2013 and changes in the circumstances during that period.
- 3.2 The most significant proposed change is the deletion of the requirement for BPEOC to accept an obligation to either undertake the restoration and aftercare of the oilfields, or to provide the MPA with funds to enable it to do so, in the event that both Perenco UK and Perenco SA fail to do so. Consequently, a critical aim of the negotiations that have since taken place has been to ensure that the financial security and guarantees that would be provided will be adequate in the light of the loss of BPEOC as potential guarantor. Accordingly, a new requirement of the s106 agreement is an obligation on Perenco UK to provide financial security to the County Council to enable it to carry out the decommissioning, restoration and aftercare of the oilfields, should Perenco fail to do so. This obligation is to be guaranteed by Perenco SA, to ensure, as far as possible, that funds are available to the County Council. In practice the arrangements for the provision of financial security are to be secured by Decommissioning Security Deeds, as set out below.
- 3.3 Another change in the new HoTs potentially requires the submission of restoration and aftercare schemes at earlier dates in order to ensure sufficient time for their determination and implementation. The remainder of the revisions to the previously approved HoTs incorporated with the new HoTs are considered to be minor uncontentious matters, which are mainly clarifications or reflect changes in circumstances since 2013.
- 3.4 Work towards the production of an agreed draft S106 Agreement is now at a very advanced stage and the latest progress will be reported orally to Members at the Meeting.

Financial Security

- 3.5 The provision to DCC of robust financial security for the costs of undertaking the decommissioning, restoration and aftercare of the oilfields has become of greater importance since it became clear that BPEOC will not guarantee or fund these works if the life of the oilfields is extended. Officers have been negotiating the terms of a Decommissioning Security Deed (DSD) which will establish legally enforceable terms for the provision of the necessary financial security, in addition to the guarantees to be given by Perenco SA, for nearly three years.
- 3.6 It is considered that in order to ensure that the necessary funds will be available to DCC in all circumstances the DSD must require the provision to DCC of financial security for at least 110% of the estimated costs of decommissioning, restoration and

aftercare of the oilfields. These costs are also to be reviewed on an annual basis. The security is to be provided by Perenco UK and its provision is to be guaranteed by Perenco SA.

- 3.7 It is intended that if, for whatever reason, Perenco UK do not complete the required decommissioning, restoration and aftercare works, DCC would look to Perenco SA to undertake them as guarantor. However, should works still remain outstanding, DCC would be able to utilise funds provided under the terms of the DSD to complete the works.
- 3.8 Officers have recently provided a draft DSD to Perenco UK, reflecting the principles set out above.
- 3.9 In practice, it is expected that a separate DSD will be established for Kimmeridge Oilfield as it is run solely by Perenco UK, rather than by a joint venture.

4. Continued Relevance of Planning Assessment

- 4.1 When the original report to the Planning Committee was considered, the Development Plan included the Dorset Minerals Local Plan (Adopted April 1999).
- 4.2 The original report also outlined that it could accord reasonable weight to the emerging Development Plan. At that time, the Bournemouth, Dorset and Poole Minerals Strategy had reached the pre submission stage. The report highlighted that the following policies contained in it were relevant to the planning assessment and being written more recently than the adopted Plan were furthermore in accordance with the NPPF:
- Policy HY2 – Proposals for Production Facilities and Ancillary Development
 - Policy HY3 – Transportation of Hydrocarbons
 - Policy HY4 – Decommissioning and Restoration of Production Facilities and Ancillary Development
 - Policy DM1 – Key Criteria for Sustainable Minerals Development
 - Policy DM2 – Managing Impacts on Amenity
 - Policy DM3 – Managing the Impact on Surface Water and Ground Water Resources
 - Policy DM4 – Protection and Enhancement of Landscape Character and the Countryside
 - Policy DM5 – Biodiversity and geological interest
- 4.3 Since then the Bournemouth, Dorset and Poole Minerals Strategy has been through Examination and is now adopted as part of the Development Plan. As all planning decisions must accord with the Development Plan unless material considerations indicate otherwise a re-assessment has taken place of the policies identified above. Whilst, in some cases, there has been a minor modification of the way policies are drafted, no changes have been made that impact on the overall principles and policy direction contained in the policies. It can therefore be concluded that the planning assessment remains in conformity with the current development plan.
- 4.4 At the time the original report was drafted other material considerations, including national policy, also impacted on the decision. It is therefore necessary to review whether changes have impacted on these too. Overall it is considered that there have been few changes to the NPPF or national policy that would impact on the overall planning assessment. Further Government statements have been made in the intervening period which stress the importance placed on onshore oil and gas

reserves and measures have also been introduced to ensure that planning applications are dealt with appropriately, although to date most of the focus has been on unconventional sources principally shale gas. It is not considered that there have been any changes that would impact on the planning assessment.

- 4.5 However, since the planning committee considered the original applications the nation has decided by referendum to withdraw from the European Union. As detailed in the original report, the European Commission have published a 'Security and Solidarity Action Plan' to ensure security of oil supply. However, as set out in the original report the main provisions of the Action Plan are now enshrined in UK legislation. It is not considered that the decision therefore impacts on the planning assessment.
- 4.6 Following the referendum a government reshuffle has changed responsibilities for energy. The Department of Energy and Climate Change has been abolished and instead a new Department for Business, Energy and Industrial Strategy formed. Furthermore, the Oil and Gas Authority who is the key regulator of operational matters concerning the oilfield will now be established as an independent regulator with new powers. It is not considered that any of these changes will impact on the working of the planning regime.

5. Continued relevance of conditions

- 5.1 The September 2013 resolution of the Planning Committee referred to the imposition of planning conditions in respect of each of the 39 applications. These amounted to a considerable number of conditions as detailed in the report, and as amended and supplemented by the update sheet. These conditions have been reassessed to ensure that three years on they are still appropriate.
- 5.2 Over the last three years, the discussions that have taken place with Perenco and its partners mean that overall there is now a much better understanding of the decommissioning and restoration processes that would be required at the Oilfields. The result is that officers are reviewing whether the conditions covering the restoration of the site as currently written provide the operators with sufficient time to restore the site to a state suitable for nature conservation.
- 5.3 Further discussion is taking place with the operator to clarify sequencing of events and the overall timescales. It is recommended that I be given delegated authority to amend the planning conditions in respect of the timescales for site decommissioning and restoration, in consultation with the Chairman and Vice Chairman of the Committee, in order to ensure that they are realistic and practicable.

6 Conclusion

- 6.1 For the reasons set out above, the proposed development is considered to be in general accord with the development plan. There are no material considerations indicating that the application should be determined other than in accordance with the development plan. Accordingly, planning permission can and should be granted on the basis set out in the Recommendation.