

*First Meeting of the Coal Forum Planning Sub-Group
10:30 –13:00 on 12 January 2007 at
DTI Conference Centre, 1 Victoria Street, London SW1H 0ET*

Attendees

Chair

Niall Crabb, Scottish Resources Group

Tom Allchurch, ATH Resources

Craig Ball, UK Coal

David Brewer, CoalPro

Mike Gandy, Celtic Energy

Gordon Halliday, Planning Officers' Society

Mel Hunt, H J Banks

John Neal, TGWU

James Poyner, Miller Argent

Pamela Ross, GMB

Philip Lawrence, Coal Authority

Lester Hicks, DCLG

Pete Bide, DCLG

Richard Bellingham, Scottish Executive

John McNairney, Scottish Executive

Carolyn Warburton, Welsh Assembly

Clare Harding, Coal Policy, Energy Technologies Unit, DTI

Karen Hopwood, Coal Policy, Energy Technologies Unit, DTI

Apologies:

John McCabe, Alcan

David Porter, AEP

Summary

1 Introductions

- *Niall Crabb, as Chairman, thanked everyone for taking the time to come to the meeting. He noted the apologies as above and regretted that neither of the coal users' representatives had been able to attend.*
- *He explained that, as proposed in "Our Energy Challenge", the Coal Forum has been set up to encourage dialogue between coal producers, coal users, clean coal technology providers, the trades unions and others with the aim of helping to secure the future of coal-fired generation and UK coal production. At its first meeting, the Forum had decided to create several sub-groups to explore and report back on specific issues.*
- *The creation of the Planning Sub Group (PSG) reflected concerns, especially with regard to surface mining, that the current planning regime is a barrier to a*

prosperous industry because of the difficulty of obtaining planning permission for new mine sites and the time it can take for an application to be finally determined, both of which can make it difficult for producers to give their customers the assurance of reliability of supply they need to continue to use indigenous coal. The presence of the term 'presumption against' in coal planning guidance in England was perceived to have been a barrier to many applications and its recent adoption in Scotland, and possibly soon in Wales too, was further cause for concern. It was recognised that the 'presumption against' could be problematic for an underground mining application in England such as a new development at Daw Mill. The question was also raised, whether a Government expression of a strategic policy for indigenous coal, similar to that given for the nuclear sector, would help to secure the future of UK coal production.

2 Purpose and Scope of Planning Sub-Group

- ***Peter Waller**, DTI, Head of Energy Technologies Unit, who was present for the start of the meeting, noted that in a recent conversation, the Secretary of State had expressed a clear interest in the work of the PSG. Peter commented that the Secretary of State's preferred style of working was to establish a full understanding of the factual base on issues as a prelude to considering possible policy options. So Peter hoped that PSG would take the opportunity to look at all the relevant issues to produce a report strong on facts and analysis which would help the Coal Forum and the Secretary of State to consider the way forward and whether there was a case for specific action.*
- *Draft Terms of Reference for the Planning Sub-Group had been circulated and any comments on this would be welcomed in order that it can be agreed at the next meeting.*

3 Opencast Production and Planning Consents 1996-2006

- ***Philip Lawrence**, Chief Executive of the Coal Authority (CA), tabled the presentation at Annex A and spoke to it. The following points were highlighted in the subsequent discussion:*
 - *Total UK opencast production fell from 16.36 mt in 1996 to 8.79 mt in 2006. During the same period the number of consents had also fallen from 47 (for 15.37 mt) to 14 (for 9.89 mt).*
 - *It was suggested that the decline in production (8.8 mt to 0.93 mt) and consents (27 to 3) in England of the period may reflect the continuation of an existing trend and may not be wholly attributed to the introduction of the 'presumption against' in MPG3, even though there was a noticeable further fall in both from 2000. Other influences such as increasing environmental*

sensitivity or coal price may have had an effect and should be considered in a more detailed analysis.

- *After falling over the first few years, output in Wales appeared to have stabilised at around 1.2-1.3 mt per year. The consents situation was skewed by consents for one or two large sites in certain years, but there had been a marked decline in numbers and tonnage across the period. It was noted that the 2006 figure does not include the 10.8 mt Ffos-y-Fran site as it is still subject to legal proceedings (see below).*
- *Scotland has shown the most stability over the period in terms of both production and consents, including approvals of significant tonnages in 1998 and 2001. With regard to the introduction in 2005 of SPP16, which includes a 'presumption against' similar to that in MPG3 for England, it was reported that notwithstanding two call-ins, only one out of seven applications so far decided under the new procedure had been refused, with the suggestion that applications which met the tests in the guidance had been approved although analysis over a longer period was necessary.*
- *The presentation was seen overall as a useful foundation on which to build a detailed analysis as an output from PSG. The areas where further data was desirable included possible analysis by Mineral Planning Authority and figures for the total number of applications made, which could help analysis of the effects of legislative changes and may be collected by the British Geological Survey: see <http://www.bgs.ac.uk/mineralsuk/minequar/coal/occ/home.html>*

Action

The members agreed to set-up a Working Party to expand the data already provided in this presentation and where possible, include underground mining data.

4 The planners' experience of coal development applications – what could be improved?

- ***Gordon Halliday** on behalf of the Planning Officers' Society expressed concerns about the quality of some applications made which was inevitably reflected in timescales and success rates, although he stated that this has improved considerably over the past few years. It was agreed that the joint guidance provided with CoalPro has been useful but may need to be updated.*
- *He also noted that there is a shortage of minerals planning specialists with knowledge of the coal industry (especially as this is seen as an industry in decline, which discourages new entrants to the planning profession from developing an expertise in the topic), and suggested that Mineral Planning Authorities might do more to share best practice between themselves and with*

the Industry to help to overcome the problems this can cause. It was agreed to look at a suitable forum.

- *He stressed, and industry representatives acknowledged, that the first three (out of six) stages of the planning process take place before the application is submitted. He further stressed the importance of early consultation with all parties involved e.g. environmental consultees, local authorities and especially local people, and said that in his experience, this was an area which some applicants had got wrong in the past. Many factors were a cause for objection but probably none more so than road transport although it was recognised that the Generators' preferred means of transport was rail.*
- *He suggested that the succession of planning policy documents addressing specific concerns around surface mining, such as noise and dust, had helped to clarify these issues without rewriting existing documents such as MPG3 for England.*

Action

It was agreed that a working party would be set up to review whether recent planning policy documents and other changes had provided an adequate opportunity to address implementation issues "without re-writing existing documents" such as MPG3 in England and to consider whether the Development Plan approach is helping new mine development.

5 The producers' experience of the planning process – what could be improved?

- *The producers present expressed concern felt across the industry about current planning regimes. A particular issue was the time applications were taking, especially those which went to appeal, and the consequent costs to the developer. Ffos-y-Fran was quoted as an extreme example and it was noted that few companies had the resources that Miller Argent had had to draw on to get its application to its present status – see Annex B. Despite the time and money it has already cost and the endorsement of a Public Inquiry, the High Court and Court of Appeal, the company still does not have a green light to proceed.*
- *Discussion took place on timelines for determining such applications and that Planning Authorities were often dependent on third party consultees. DCLG referred to ongoing work on this subject and all parties agreed that this was an area that could usefully be addressed.*
- *The producers agreed that there could be some value in reviewing the "Planning for Coal - Code of Practice" to ensure that it reflects current industry best*

practice and to take into account that such codes form part of latest planning guidance in Scotland.

- *Reference was made to MPS1 being a major step forward although there were understandable inconsistencies with earlier guidance. A clear recognition that need was a material planning consideration would be a valuable means to 'help to secure the future of UK coal production' and balance the 'presumption against' concerns. Everyone also agreed that the Development Plan approach should help to give producers more certainty by identifying areas for future developments although there was a possible need for the process to be more effective.*

Actions

It was agreed that further Working Groups would be set up to examine whether a recognition of need would be of assistance, to review the existing Code of Practice, and to report on current constraints on the determination of applications and consider potential improvements which could reduce the time taken to determine them.

6 The impacts of national and sub-national Government, the EU and others on planning authorities or developers – how can the Coal Forum influence these groups?

- *As time was short there was no detailed discussion under this heading. It had earlier been noted that the recent European Commission package of proposals on energy strategy and climate change provided a useful backdrop to the PSG's work.*

7 Sub-Group work plan

- *Details of the 5 working groups would be circulated as soon as possible so that they could make progress ahead of a further PSG meeting in early March.*
- ***Niall Crabb** would report on the discussion and these outcomes to the Coal Forum meeting on 23 January. It was expected that the Forum would be looking for substantive progress on the five workstreams ahead of its next meeting in late March.*

8 Future Meetings

The next meeting will take place on [Wednesday, 7 March – to be confirmed] at the DTI Conference Centre, 1 Victoria Street, London.

Reports from all 5 Working Parties should reach the secretariat no later than Friday, 2 March for circulation with the other meeting papers.

MILLER ARGENT EXPERIENCE: FFOS-Y-FRAN RECLAMATION SITE

Having first had to fight a compulsory purchase order, Miller Argent submitted an application to recover 10.8 million tonnes of coal as part of a project to reclaim over 1,000 acres of derelict and contaminated land. The sequence of events was then as follows:-

- i. The application was submitted in May 2003.*
- ii. The application was "called in" in December 2003.*
- iii. The Local Authority decided to support the application in June 2004.*
- iv. A public enquiry was held in September 2004.*
- v. The Inspector submitted his report in Nov 2004.*
- vi. A Planning Decision Committee of the Welsh Assembly met in February 2005 and issued a "minded to grant" planning consent subject to a Section 106 Agreement.*
- vii. The Section 106 Agreement was completed in March 2005.*
- viii. Formal planning consent was completed in April 2005.*
- ix. A legal challenge was made on five grounds in May 2005 which was heard in the High Court in December 2005.*
- x. The High Court quashed the planning consent on the sole ground of "apparent bias" on the part of the Welsh Assembly Minister who claimed the Planning Decision Committee – the four planning grounds were dismissed.*
- xi. The Welsh Assembly appealed the decision of the High Court and this appeal was heard in the Court of Appeal in October 2006 and was overturned in November 2006*
- xii. The objectors gave notice of their intention to appeal to the House of Lords in December 2006 and were granted legal aid in January 2007. It is understood that the process is now for an initial decision within three months as to whether there should be a full hearing. If the decision is that there should be, this could take a further six months.*

In conclusion, despite the Public Inquiry, High Court and Court of Appeal confirming that all the planning points as being robust and proper, and the spending of many millions of pounds, the company still does not have a green light to proceed.