



OFFICE OF CLIMATE, LICENSING & RESOURCE USE

ADDENDUM TO THE REPORT OF THE TECHNICAL COMMITTEE ON OBJECTIONS TO LICENCE CONDITIONS

TO:	Directors
FROM:	Technical Committee - LICENSING UNIT
DATE:	12 November 2014
RE:	Objection to Proposed Determination for Glanpower Limited, IE Licence Register No. W0282-01

Background

This report is an addendum to the Technical Committee report that was presented to the Board of the Agency on the 9th September 2014 in relation to the above licence application. The original Technical Committee report considered a third party objection from Mr. Peter Sweetman of Peter Sweetman & Associates and one first party submission on the objection. When considering the objection it became apparent that the objector had not had an opportunity to comment on a letter from An Bord Pleanála (ABP) to the Agency as the letter had not been available on the EPA website at the time. This particular letter was a response from ABP to a statutory EIA consultation notice from the Agency. The letter from ABP is dated 31st October 2013 and is discussed in the original Technical Committee report.

As a consequence of this, the Agency wrote to Mr Sweetman on the 30th September 2014 inviting comment on that particular letter. Mr Sweetman replied on the 31st October 2014.

Consideration of the submission from Mr Sweetman

In relation to the letter from ABP the objector provided two comments. These are dealt with in turn below:

- (i) The response from ABP failed to answer the question

Technical Committee's Evaluation:

It is not clear as to what 'question' Mr Sweetman is referring. In his original objection it was contended by Mr Sweetman that the Agency did not consider correspondence from ABP for EIA purposes. This objection is discussed under Objection No. (ii) in the original Technical Committee report. It was demonstrated in the original report that, despite the fact that the ABP response to the EIA consultation notice from the Agency was not available to Mr Sweetman via the Agency website at the time that he made his objection, the Agency did consider the response when carrying out its assessments including EIA.

Aside from that it is not considered that the above comment by Mr Sweetman offers any additional point for consideration by the Technical Committee.

Recommendation: No change.

(ii) No EIA as per the judgement in Kelly v ABP was carried out on this proposal

Technical Committee's Evaluation:

This particular judgement is discussed in a memorandum from Donal Grant to the Board of the Agency dated 3rd September 2014. It is not clear as to which particular aspect or part of the judgement Mr Sweetman is referring. The judgement addresses both EIA and Appropriate Assessment with the focus being more on Appropriate Assessment and it was in relation to Appropriate Assessment that the High Court made a finding against An Bord Pleanala in that case.

In relation to EIA the following were submitted to the High Court as being grounds upon which relief from the Courts was being sought:

- The EIS's accompanying the planning applications were inadequate
- Proper EIA of the proposed developments was not carried out by ABP
- ABP failed to record its conclusions or to give a statement of its reasons or considerations these being contrary to national and European law

The judgement itself provides a summary description of the statutory framework that applies to ABP (and other similar public bodies) when making its decisions and when carrying out of EIA. Reference is made to the obligations of the EIA Directive as well as to relevant parts of national legislation in relation to EIA including the following:

- The definition of EIA.
- The need or not for EIA and decisions and reasons for same.
- The documents that can be used when carrying out EIA.
- The requirement to inform the applicant and the public of the public body's evaluation of likely significant effects (i.e. the EIA itself) and its ultimate decision (i.e. to grant or refuse permission) and to make relevant information on those matters available.

Having examined the judgment and in particular the parts of it that are pertinent to EIA, the Technical Committee is satisfied that the following can be concluded in relation to the licence application and proposed determination:

- The EIS documents were adequate.
- The Agency has fulfilled its statutory role in relation to EIA.
- The Agency has informed the public and the applicant of its evaluation of likely significant effects (this being set out in the Inspectors Report and EIA).

- The Agency has informed the public and the applicant of its proposed decision and reasons for same.

Overall, the Technical Committee is satisfied that in relation to the licence application there is nothing in the judgement to indicate that EIA has not been properly carried out.

Recommendation: No change.

Overall Recommendation

It is recommended that the Board of the Agency grant a licence to the applicant

- (i) for the reasons outlined in the Proposed Determination; and,
- (ii) subject to the conditions and reasons for same in the Proposed Determination.

Signed



Michael Owens

for and on behalf of the Technical Committee