

Ministerial Advice

To: 1. Deputy Minister for Housing and Local Government

From: Hywel Butts, Planning Directorate

Date: 14/05/2019

Subject: Biomass UK No. 2 Ltd, Barry – Cabinet Written Statement on Environmental Impact Assessment Screening

MATS Reference number: MA - P/HB/1848/19

When is a decision required from the Minister? Urgent – Needs to be cleared by Tuesday 14 May so it can issue before Plenary on Wednesday 15 May.

1. What is the issue you are asking the Minister to consider?

- 1.1 Publication of a Cabinet Written Statement providing an update on the Welsh Ministers' consideration of whether Environmental Impact Assessment (EIA) is required in relation to the construction of a waste wood fuelled electricity generating plant at Woodham Road, Barry.

2. What action(s) are you recommending to the Minister?

- (a) Agree the Cabinet Written Statement at Doc 1 and its publication before Plenary on Wednesday 15 May 2019.

3. Deputy Director, Statement of Assurance

I, *Neil Hemington, Chief Planner*, confirm that I have quality assured this advice.

I am satisfied that the recommended decision or action, if agreed, would be lawful and affordable. Welsh Government policy priorities and cross portfolio implications have been fully considered.

4. Context

Environmental Impact Assessment

- 4.1 EIA is a formal process intended to ensure planning decisions on larger more complex developments are taken with the full knowledge of their possible environmental effects. The current EIA procedures are largely derived from the Directive 2011/92/EU as amended by Directive 2014/52/EU (“the EIA Directive”). The EIA Directive is transposed across Wales and the UK by separate regulations for each sector. Most EIAs in Wales are for projects consented through the town and country planning system.
- 4.2 The EIA Directive sets out two lists of project types which EIA can apply to. The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (“the 2017 Regulations”) set out those projects relevant to land use planning. Those developments which fall within a project category in Schedule 1 to the 2017 Regulations automatically require EIA. Those developments falling within a project category in Schedule 2 must be ‘screened’ to decide whether they must be subject to EIA.
- 4.3 For Schedule 2 projects, screening involves answering the question ‘is the development likely to have significant effects on the environment by virtue of factors such as its nature, size or location?’ If it is, the development requires EIA, which involves the developer preparing an Environmental Statement (ES), the ES is made available to the public, and the competent authority takes the ES and any other environmental information into account when making its decision on the application.

The development

- 4.4 A planning application (2008/01203/FUL) for a wood fuelled energy plant, Woodham Road, Barry Docks was registered as valid in 2009. The plant proposed pyrolysis for gasification of wood, followed by burning the resultant gas to generate electricity. Permission was granted on appeal by a Planning Inspector on behalf of the Welsh Ministers in 2010 (“the 2010 permission”).
- 4.5 Since 2010, the developer has chosen to pursue an alternative gasification process, replacing pyrolysis with a fluidized bed technology. This required changes to the building design so outline planning permission (2015/00031/OUT) was granted on 31 July 2015 (“the 2015 permission”) by the Vale of Glamorgan Council to replace the 2010 permission.
- 4.6 Since 2015, the developer has sought and received approval for all reserved matters relating to the 2015 permission and has almost completed commissioning of the plant. They have also secured an Environmental Permit from Natural Resources Wales under the Environmental Permitting (England and Wales) Regulations 2016 to operate the facility.
- 4.7 While seeking an Environmental Permit, the developer sought to improve firefighting provision, including the construction of a substantial tank to hold water for use in emergencies together with associated pumps. The tank and pumps require planning permission, so the developer has submitted an

application (2017/01080/FUL) under section 73 of the Town and Country Planning Act 1990 ("the 1990 Act") to vary the 2015 permission to include them, together with the relocation of parking spaces. A 'section 73 application' is used to implement (in effect) a planning permission without complying with one or more conditions and also to amend approved plans. The application is currently being considered by the Vale of Glamorgan Council as the Local Planning Authority ("LPA").

Welsh Government consideration of the need for Environmental Impact Assessment

- 4.8 On receipt of planning application 2008/01203/FUL in September 2008, the LPA concluded EIA was required for the development. The EIA Regulations provide for a developer who disagrees with the opinion of an LPA to ask the Welsh Ministers for a screening direction. Officials issued a screening direction on 17 June 2009. The direction concluded the development did fall within a project category in Schedule 1 and therefore EIA was required.
- 4.9 The developer subsequently asked for the direction to be reconsidered. They argued the project did not fall within a Schedule 1 project category and insufficient reasons were given to explain the decision. In response, officials issued a second direction to replace the earlier one. The direction letter reflected on the developer's arguments about whether pyrolysis was 'incineration'. Officials were undecided whether the process was incineration so adopted the approach, the development was unlikely to have significant effects on the environment, so did not fall within the Schedule 1 project category and therefore EIA was not required.
- 4.10 The LPA refused planning permission on 31 July 2009 so the developer appealed to the Welsh Ministers. On receipt of a planning appeal, the need for EIA is reconsidered by the Welsh Ministers. A third direction was therefore issued which used the same rationale as the second direction, concluding EIA was not required. During determination of the appeal by a Planning Inspector, the issue of EIA was raised by objectors. In his decision letter, the Inspector notes the Welsh Government, LPA and appellant are satisfied the development did not require EIA. The appellant, however, had submitted an ES as part of their appeal submission. While not expressing a view about whether EIA was required, the Inspector considered the ES satisfied the requirements of the EIA regulations in force at the time, for developments where EIA is required (The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 Regulations")). The appeal was allowed on 2 July 2010 thereby granting the 2010 permission.
- 4.11 Following the change in proposed gasification technology the developer submitted planning application 2015/00031/OUT. The LPA issued a screening opinion, concluding the development did not require EIA. In July 2015, while the LPA were considering the application, Barry and Vale Friends of the Earth asked the Welsh Ministers to review the LPA's screening decision. In response to this third party screening request, officials agreed with the LPA's view and

declined to issue a screening direction.

4.12 In December 2017 the Docks Incinerator Action Group (DIAG) wrote to the Cabinet Secretary for Energy, Planning and Rural Affairs and other Welsh Ministers asking for the need for EIA in respect of the plant to be reviewed.

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7 What are the financial implications of Ministers agreeing to this advice and which budget will this be paid through?

Cost to WG

7.1 There are no additional financial implications arising from this advise. Costs of agreeing with the recommendation at paragraph 2 can be met through the existing budget: BEL 2250 – Planning & Regulation Expenditure.

7.2 EERA Finance clearance: EERA/078/19.

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Annex A: Copy Recipients

All mandatory recipients for MA-(P) papers.

Additional copy recipients specifically interested in this advice:

- HoBs Planning Directorate
- Environment and Rural Affairs Finance mailbox
- LGFP Mailbox
- LS Planning Mailbox
- Paul Griffiths
- Jane Runeckles
- Andrew Slade
- Simon Jones
- Dean Medcraft
- Jasper Roberts
- John Kirkham
- Alison Henders-Green
- Heledd Owen
- Kathryn Jones
- Anna Miller
- Nia James
- Amelia John
- Nicholas Webb
- Amanda Howells
- Government Plenary Business Mailbox



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Wood fired energy plant, David Davies Road, Barry –
Need for Environmental Impact Assessment

DATE 15 May 2019

BY Hannah Blythyn AM, Deputy Minister for Housing and Local
Government

Biomass UK No.2 Ltd submitted a planning application to the Vale of Glamorgan Council under section 73 of the Town and Country Planning Act 1990 (reference number 2017/01080/FUL). In February last year we wrote to the company to inform them we were minded to direct the application must be subject to Environmental Impact Assessment (EIA). We continue to consider matters in light of representations made.

As part of that process we have identified a potential breach of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the EIA Regulations”) in relation to planning application 2015/00031/OUT.

We are aware that if there has been a breach of the EIA Regulations we have a duty of sincere co-operation under European Law which requires us to exercise any powers available to us under domestic law to remedy any breach that may have occurred if taking such measures is lawful and proportionate.

We are exploring options under domestic law to progress matters as quickly as possible. We consider that compiling and consulting upon an environmental statement would assist with remedying any breach of the EIA Regulations. The consultation will allow all interested parties to consider and comment on a single comprehensive document, which would reflect the requirements for environmental statements as described in regulations applying EIA to Town and Country Planning. This would ensure that all of the potential environmental impacts which could arise from the development are collated and that communities have the opportunity to consider and respond to that information.