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Sent: 20 May 2019 14:32
To: PS FirstMinister
Cc: Woodhead, Gareth (ESNR-Economy Skills and Natural Resources);
Evans, Sioned (ESNR -
Economy, Skills and Natural Resources); Butts, Hywel (ESNR-Planning)
Subject: RE: FOR MONITORING: Barry incinerator breaches following
environment impact
assessment
Attachments: TCP - Barry Biomass - Briefing on Cabinet Written
Statement (002).docx

Hi Laura

Lines and briefing on Barry Biomass below.

Neil

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Behalf Of PS FirstMinister
Sent: 20 May 2019 10:20
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Subject: RE: FOR MONITORING: Barry incinerator breaches following environment impact assessment

Dear Huw/Heledd/Tim

The First Minister has asked for more information on all of this. He would also like to know if we have decided on an EIA here?

Grateful if you could get back to me as soon as possible

Thanks

Laura Cole

Ysgrifennydd Preifat i Brif Weinidog Cymru | Private Secretary to the First Minister of Wales

Mark Drakeford AC | Mark Drakeford AM

Llywodraeth Cymru | Welsh Government

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BRIEFING
BARRY BIOMASS
WRITTEN STATEMENT
15 May 2019

Lines to take

* On 15 May the Minister and Deputy Minister for Housing and Local Government issued a Cabinet Written Statement setting out the latest position on the Barry Biomass case.

* While we have not arrived at a final conclusion to this matter we think the submission of a single comprehensive document by the developer updating the Environmental Statement (ES) submitted in 2009 will be helpful to all parties.

* I am aware there has already been extensive opportunities for the public to comment on the applications for planning permission and environmental permit

* The ES update will help clarify the positions of all parties, identifying common ground or issues where parties disagree about the environmental impact of this plant prior to a decision on the way forward.

* This case has raised complex issues, about how EIA applies to applications to amend planning conditions, which have taken some time to work through. By taking this time to fully work through the issues, I believe will result in clearer guidance on EIA procedures which will benefit all those working with the planning system. However, I do not believe a review of the whole EIA regulations is necessary at this time.

* We want to ensure our actions as a government uphold our international obligations in respect of Environmental Impact Assessment, which is why we are giving careful consideration to compliance with the EIA Directive, taking account of the representations of the developer and those of the Docks Incinerator Action Group and others.

* Officials recently wrote to the developer seeking information as part of preparing advice in this case and it was at this time the developer offered to voluntarily compile environmental information. We believe receiving and consulting on this information is the best course to take at this time, providing an opportunity for the public to comment.

Planning and Environmental Impact Assessment

* It is essential to ensure the decision complies with the law, so it is fair to the developer and critically ensures the environment is properly protected.

* Officials have met members of the Docks Incinerator Action Group to listen to their views. These will be taken into account when a decision is made.

* Vale of Glamorgan planning department are aware the Welsh Ministers are considering the potential need for the EIA in respect of the latest planning application, and have indicated to officials they will not determine the application until a final decision is made.

* I cannot comment on the intention of the developer to start operating the plant. Enforcement is a matter for the Local Planning Authority but such matters could come before the Welsh Ministers on appeal.

* The planning application is currently before Vale of Glamorgan Council. I am unable to comment on the detail of this case to avoid prejudice to the final decision.

* The EIA Regulations are intended to ensure planning decisions on larger more complex developments are taken with the full knowledge of their possible environmental effects.

* Where EIA is undertaken as part of a planning application, Natural Resources Wales is a consultee. However they have their own role to consider environmental impacts as part of the environmental permitting process, which is what they have done.

* Natural Resources Wales (NRW) and Vale of Glamorgan Council are working together to address the concerns of people in Barry during pre-commissioning work at the Biomass UK No 2 facility.

BACKGROUND BRIEFING

Environmental Impact Assessment

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.

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.

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. 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").

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.

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.

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

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.

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'.

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.

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.

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. As the section 73 application (2017/01080/FUL) was undetermined, officials looked again at the need for EIA

13.

14. Officials reconsidered the project as a whole and concluded the plant may fall within project category 10 set out in Schedule 1. The reasons for the conclusion were set out in a letter to the developer which informed them we were 'minded to' direct the plant to cease operations until an EIA was completed. This was sent on 14 February 2018.

Next Steps

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19. In the meantime a draft cabinet written statement has issued, providing an update on the issue for AMs.