

Emily Forbes
Chief Officer (Town Clerk)
Barry Town Council
7 Gladstone Road
Barry
Vale Of Glamorgan
CF62 8NA

04 January 2018

Dear Emily,

RE: NRW Consultation on the Biomass UK No2 Ltd Environmental Permit Application

Thank you for your letter dated 18 December 2017.

Before responding to your specific points, it may be useful if I set out some background so that our response to your concerns can be placed in a context that reflects NRW's role and responsibilities with regards to environmental permitting.

A development such as this requires various consents and each consent deals with different legislative requirements. This development requires a planning consent and environmental permit to operate. These consenting processes are independent of each other and are the responsibility of separate public bodies. For this reason, aspects that are properly the domain of planning authorities cannot be re-examined by NRW when determining permit applications, otherwise, it would lead to businesses being double regulated.

Our role is concerned solely with regulating aspects of the activities that take place within the boundary of the site. We have no decision-making role as to where a development is located nor any role in regulating the traffic it might generate. They are material planning considerations and are considered as part of the planning process and cannot be considered again as part of the permitting process. These facts are often not appreciated by consultees of the permitting process.

Turning to your specific points;

1 and 2 Timeline and Consultation Process

We have already conducted extensive consultation over prolonged periods throughout the determination process and gone beyond that required by statute, regulation or guidance. In such circumstances, we would not be conducting a fair process if we were to extend it still further. Consequently, we are not able to justify any further extensions to the consultation timetable.

We have provided clarification and responses to queries when they have been put to us, including through a series of meetings with the DIAG committee chaired by Jane Hutt AM, throughout the consultation periods and within documents like How to Have Your Say and our recent published statement <http://naturalresourceswales.gov.uk/about-us/news-and-events/statements/our-assessment-of-the-biomass-uk-no2-ltd-permit-application/?lang=en>

The public consultation requirements for permitting are set out in the Environmental Permitting Regulations 2016 and we are completely confident that we have satisfied them. For clarity, we are also confident and satisfied that we have followed our own guidance. With reference to RGN6, this is NRW's own internal guidance. It is incorrect to refer to it as 'Regulations', and it does not carry any legal authority. Accordingly, the document must be read with that in mind. Therefore, we do not agree that we have failed to meet our statutory obligations for consultation or failed to meet the commitments in our public participation statement, as you state.

Also, to confirm, we have already sought an extension to the timescale for the determination from the applicant which has allowed us to undertake an extended consultation to 22 January 2018, rather than for the minimum 4 weeks required in the regulations.

3. Errors within the report

You have highlighted in earlier correspondence that we incorrectly attributed the commissioning of the Capita report to DIAG instead of Barry Town Council. There was an administrative error which will be corrected. If you have further representations to make on the decision document, then please do so and we will make any necessary amendments before publication of the final document.

4. Costs for Technical Advice

You have identified certain costs you have incurred as a consequence of decisions the Town Council has made to instruct independent experts for advice and now seek recompense from NRW for such costs. There is absolutely no basis upon which to justify such a request nor to justify NRW agreeing to it.

The decision document sets out information about the facility and NRW's assessment of the application in as non-technical way as is feasible, given the highly complex nature of a technical application. Our summary statement referred to above also gives a non-technical description.

As an independent regulator, we have carried out a robust assessment of the application to enable us to make the draft determination we are currently consulting on. Our staff are highly qualified and competent and have years of experience of making such determinations within the context of the Environmental Permitting Regulations.

If BTC feel they require additional independent information then that is your prerogative to seek it, but this does not provide any justification for seeking costs from NRW or a further time extension.

5. Independent monitoring

Finally, should the permit be issued, we regulate industrial sites in a variety of ways, using the conditions of the permit to ensure compliance.

The operators would be required to carry out both continuous and periodic monitoring of their emissions to air, and provide the results to us. We ensure all monitoring is carried out in accordance with accredited MCERTS standards to provide confidence in the monitoring of emissions to the environment.

Whilst we would not routinely carry out our own independent monitoring, we do undertake spot checks and unannounced visits, as well as detailed technical audits of the operation to ensure that the plant is operated to meet the stringent controls in the site's permit. This will include the assessment of monitoring results to measure the performance of the plant.

We recognise that some objectors including Councillors may continue to be unhappy with our position, including with our independent expert views as expressed within our 'minded to' decision document, but we remain confident that we have been robust in our assessments of the evidence and more than compliant with the consultation process. I note your intention to send us further representations once you have received further technical advice. We will give due consideration to all representations received within the consultation timetable.

Yours sincerely,



John Wheadon
Rheolwr Gwasanaethau Trwyddedu, Cyfoeth Naturiol Cymru
Permitting Services Manager, Natural Resources Wales