

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

<b>TO:</b>	Directors	
<b>FROM:</b>	Technical Committee	<b>- LICENSING UNIT</b>
<b>DATE:</b>	3 September 2014	
<b>RE:</b>	Objection to Proposed Determination for Glanpower Limited, IE Licence Register No. W0282-01	

Application Details	
Type of Installation:	Waste to Energy Facility
Class of activity:	11.3(a) and 11.4(b)(ii) of the First Schedule of EPA Act 1992 as amended
Location of activity:	Derryclure Energy Centre, Derryclure, Tullamore, County Offaly
Licence application received:	22 June 2012
PD issued:	16 April 2014
Third Party Objection received:	13 May 2014
Submission on Objection received:	16 June 2014 (from applicant)

## Company

The application relates to a proposed new development of a waste to energy facility in Derryclure, County Offaly. It is proposed that the facility will import 65,000 tonnes of non-hazardous waste and 10,000 tonnes of energy crop biomass per annum for the generation of renewable energy using pyrolysis technology. Pyrolysis is a non-flame thermal treatment technology. The facility was granted planning permission by An Bord Pleanála in July 2011.

## Consideration of the Objection

This report considers one valid third party objection which was received from Mr. Peter Sweetman of Peter Sweetman & Associates and one first party submission on the objection.

The Technical Committee, comprised of Michael Owens (Chair) and Pamela McDonnell, has considered all of the issues raised in the objection. John McEntagart, the licensing Inspector, also provided confirmatory comment. This report details the Committee's comments and recommendations. The main issues raised in the

objection are summarised below. However, the original objection should be referred to at all times for greater detail and expansion of particular points.

The objector is not objecting to the conditions of the PD itself but is objecting to the decision of the Agency to grant a licence. Overall, it is contended by the objector that an Environmental Impact Assessment (EIA) has not been carried out in accordance with Articles 2 to 4 of the EIA Directive. The objector comes to this conclusion based on a number of related reasons which are set out in the objection. It is proposed to consider each of these reasons in turn below although it should be noted that each 'reason' considered does overlap to a certain extent.

(i) Content of EIS was inadequate

The objector refers to the decision of An Bord Pleanála (Ref. PL.19.238420) to grant planning permission for the development (granted 21/07/11). An Bord Pleanála's (ABP) decision contains a number of conditions. These conditions address a range of matters (including construction traffic management, construction management, and landscaping at the installation) and in general require that certain aspects in relation to these matters are agreed with the local authority prior to commencement of development. The objector points out that an EIS should '*contain all the likely effects*' and subsequently contends that the very existence and effect of the ABP conditions reveals that these matters (as listed above) were not adequately addressed in the EIS.

Submission on Objection:

The applicant submits that the content of the EIS is adequate and that it complies with the relevant legislation. The submission contains a quote from the report of the ABP Inspector in relation to the adequacy of the EIS wherein it is stated that the EIS contains the information as required by Schedule 6 of the Planning and Development Regulations.

Technical Committee's Evaluation:

ABP is within its powers to set conditions in its decisions. The setting of such conditions does not necessarily mean that the content of the EIS was inadequate. It should be noted that the EPA Inspector's Report states that the EIS complies with the requirements of the relevant licensing regulations (SI No. 137 of 2013).

The Technical Committee is satisfied that the content of the EIS was adequate.

**Recommendation:** No change.

(ii) Agency did not consider correspondence from ABP for EIA purposes

The objector refers to the Licensing Inspector's Report wherein the Inspector describes the information that was utilised when carrying out EIA and which included '*correspondence between the Agency and ... An Bord Pleanála regarding EIA*'. The objector refers to the '*only communication*' from ABP to the EPA as that which is dated 9<sup>th</sup> October 2013 and argues that, given the content of that letter, the Agency could not have utilised it for EIA purposes.

Submission on Objection:

The applicant does not agree that certain information was not made available to the EPA by ABP when carrying out EIA.

Technical Committee's Evaluation:

As required the Agency carried out EIA consultation with ABP as follows:

- Statutory EIA consultation notice issued to ABP - 3<sup>rd</sup> October 2013.
- Acknowledgement received from ABP - 9<sup>th</sup> October 2013.
- Response received from ABP to EIA consultation - 31<sup>st</sup> October 2013.

The objector is referring to the letter from ABP to the EPA dated 9<sup>th</sup> October 2013 and is contending that it could not have been used for EIA purposes and that therefore there was in effect no correspondence in relation to EIA from ABP to which the Agency could have had regard. The letter of the 9<sup>th</sup> October is in fact an acknowledgement letter issued to the Agency by ABP in response to the Agency's EIA consultation notice (dated 3<sup>rd</sup> October 2013). However, as can be seen from the list above ABP did subsequently provide a more substantial reply to the Agency's EIA consultation notice (dated 31<sup>st</sup> October 2013). It was the content of this second letter that was considered by the Agency when carrying out EIA and not the letter of 9<sup>th</sup> October 2013 to which the objector refers. It is clear that the Agency carried out EIA consultation as required by statute with ABP and that the reply was considered by the Agency when carrying out EIA.

The second letter from ABP (dated 31<sup>st</sup> October 2013 and referred to above) was, in error, not published to the EPA website following its receipt although it was considered by the Agency when carrying out EIA. The second letter was published to the EPA website on the 12/08/14.

**Recommendation:** No change.

(iii) The Inspector did not consider a submission

It is contended that the Inspector did not consider a submission that was made by the objector and which referred to the CJEU Judgement in Case C50/09. Again the objector refers to (i) the apparent incompleteness of information in the EIS and (ii) the apparently subsequent inadequate EIA.

Technical Committee's Evaluation:

The latter contentions have been addressed in this report. Aside from that, the submission that was made by the objector was addressed in the Inspector's Report.

**Recommendation:** No change.

(iv) The Agency did not carry out EIA prior to grant of consent

The objector quotes from CJEU Judgement in Case C50/09 (item No. 36 of the Judgement) and contends that the Agency did not carry out EIA prior to grant of consent. To support this contention the objector again argues that the existence and effect of the conditions as included by ABP in its decision (which among other things relate to construction management) indicate that certain matters were not adequately addressed in the EIS and that therefore the likely significant effects of these matters (*'construction and operational phases of the development'*) were not assessed. Consequently it is concluded by the objector that EIA could not have been carried out by the Agency prior to grant of consent.

Technical Committee's Evaluation:

The existence and effect of the conditions that were set by ABP in its decision have been discussed above. The Technical Committee is satisfied that it has not been demonstrated that certain information was not included in the EIS. The Technical Committee is also satisfied that the Agency carried out EIA prior to making its decision (i.e. before grant of consent).

**Recommendation:** No change.

- (v) The requirements of Article 2 and 4 of the EIA Directive have not been fulfilled.

The objector quotes the CJEU Judgement in Case C50/09 where it was found that Ireland had failed to ensure that, where planning authorities and the Agency both have decision making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 and 4 of the EIA Directive.

The objector also quotes the Inspector's Report wherein it is stated that the Agency has carried out an EIA in accordance with the EPA Acts. The objector submits that there has not been complete fulfilment of the requirements of the Article 2 and 4 of the Directive.

Technical Committee's Evaluation:

The CJEU Judgement in Case C50/09 relates to the manner in which the EIA Directive is transposed into Ireland's legislation. Following on from Case C50/09, national legislation, including the EPA Act, was amended to take account of the judgement. The Technical Committee is satisfied that the Agency has fulfilled its legislative role in relation to EIA and that EIA has been carried out in accordance with Articles 2 and 4 of the EIA Directive.

**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

A handwritten signature in black ink, appearing to read "Michael Owens". The signature is written in a cursive style with a prominent loop at the end.

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Michael Owens

for and on behalf of the Technical Committee