

## PAS Biomass Workshop

Speaker: Sharon Marklaw - Planner/PAS volunteer

- Section 36 application - rare for planners to deal with.
- Climate Change Scotland Act 40% cut by 2020 and 80% by 2050
- Renewable heat 11% by 2020.
- Scottish Government Renewable Heat Action Plan
- Electricity Act - Section 36 Applies when proposals are over 50MW onshore, or over 1MW offshore. Also overhead power lines, associated infrastructure, gas/oil pipelines.

Who deals with Section 36?

- Energy Consent Unit - SG
- Issuing of consent is **deemed planning permission**
- Process: Initial Enquiry, Application, Consultation, Determination, Discharge of Conditions.

**Deemed planning permission** is like “Government Authority” - links to **Town and Country Planning Act**.

### Scoping

- Formal Scoping report should be available on the Scottish Government ECU website.

### Application

- All documents submitted available for public view.
- Application form, EIA and possibly planning statement
- Both Section 36 application and EIA must be advertised in local press.
- Location, Purpose and where you can get it. Address and deadlines for representations.
- Two adverts must be placed in local press in 2 weeks, a minimum of 28 days before deadline.
- 4 month consultation period.

For Biomass:

- Should include assessment of sustainability of fuel sources.
- Should include heat and power plan.
- Should include details of process as well as layout etc.

Public and community groups have the **right** to comment on upon the proposal - but Local Authority, SNH and SEPA are only statutory consultees. No statutory requirement for community engagement.

If Local Authority objects, and there's no way to come to resolution, then the Scottish Minister must call a public enquiry.

## **Determination**

ECU must balance range of interests. Should be determined within 9 - 12 months. Can be much longer if public enquiry required.

Conditions attached to Section 36 permission - are attached as planning consent and for the local authority to discharge.

If permission denied - only option for developer appeal = judicial review.

## **Discharge of Conditions**

- Section 36 establishes “principle of development.”
- Specific details contained in the conditions.
- Discharge of conditions negotiated between local authority and the applicant.

## **Questions?**

If it goes to Public Local Enquiry - anyone or body that makes an objection can make a representation to the PLI - but the reporter decides what the ‘main issues are’.

Q - Are there provisions equivalent to the Section 75 agreement for the Electricity Act?

A - Conditions could include a section 75 provision.

Q - What role do Westminster or other non Holyrood politicians play?

A - The final decision lies with the Scottish Government ministers. The views of other politicians will be taken into account by the ECU.

Q - What happens if LA and developer can't agree on discharge of conditions?

A - No-one knows!

Q - How does this procedure compare with the systems in other countries?

A - EIA's apply in all EU countries. Other parts of the process vary nationally.

Q - Are the Scoping documents in public?

A - The Forth Energy submissions, and the ECU opinion is available on the ECU website. The submissions from other consultees are not on the ECU website.

Q- Where are we now in the process?

A - The Scoping process has been complete. Awaiting Forth Energy application.

Q - Do the neighbour notification rules apply in this case?

A - No.

## **Making Representations**

- Submission of Application
- “Gate-checking” period - 2-3 weeks - validation of application. No stat. timescale. Application will go out to statutory consultees to check that everything is there.
- Statutory consultees - 16 weeks for comment.
- Application advertised - Minimum of 28 days to comment.
- Full application may not be on ECU website.
- 1st Statutory consultee response received = further 28 days to comment.
- If developer modifies plans/ or addendum submitted then further 28 days consultation.

Where: [energyconsents@scotland.gsi.gov.uk](mailto:energyconsents@scotland.gsi.gov.uk)

## **Opportunities**

- Use local knowledge
- Develop planning knowledge
- inclusive & representative
- develop relationships
- share knowledge & experiences.

Notes taken by A.Tibbitt on 5th June at 2010 on behalf of Leith Links CC/ Greener Leith